

LETTER

TO

ROBERT MORRIS, Esq.

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L E T T E R

TO

ROBERT MORRIS, Esq.

WHEELIN

The RISE and PROGRESS of our
Political Disputes are considered.

TOGETHER WITH

SOME OBSERVATIONS on the
POWER of JUDGES and JURIES

APR 15 1818

THE CASES OF WOODFALL and ALMON.

One recd long since, please recd mtdgat mtdg.

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L E T T E R

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ROBERT MORRIS, Esq.

S I R,

I Cannot resist the impulse of congratulating my country on the shining exhibition which you have made. In this hot piping time of peace, when the spirit of liberty seems to be sunk in lethargic slumbers, and the dæmon of despotic power is advancing with huge strides to swallow up the poor remains of the constitution, it must give every true-born Englishman the highest delight and exultation, to see a hero so well qualified, and so well armed for the enterprise, step forth and bid him defiance.—Since the accession of his present majesty, we have suffered the most unheard-of violations of liberty

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and property, without repining and without murmuring : no man has hitherto taken upon him the character of champion of the people ; and as great minds are only roused by great and pressing occasions, so it would seem that you have lain perdue, till an occasion worthy of your appearance should present itself.

I am aware, that some people may foolishly imagine there never was less occasion for knight-errantry in politics than at present. Well-meaning men have said, that the king is a supporter and a lover of the constitution ; that the ministers have no design to injure it ; that the parliament is its bulwark and defence ; and that the courts of justice are the refuge of its friends. They have also said, that from Wilkes down to alderman Oliver, heroes of all trades, religions, complexion, and colour, have stood forth in its defence ; that as heretofore wisdom proceeded out of the mouths of babes and sucklings, so the salvation of Old England *lies* in the mouths of men more ignorant, but less innocent than they ; that these political tinkers, in the true spirit of the trade, while they labour to mend one hole in the constitution, generally make two ; and so continue patching,

ing, as if it had been only formed to be clouted, till, like Sir John Cutler's stockings, it shall grow quite a new thing, and composed of different materials from its original essence.

But, Sir, I consider all these as trifles. The constitution never was attacked till you were personally injured, and never defended till your pamphlet appeared. Even your prowess, as Secretary of the Bill of Rights, I look upon merely as a preparatory sally, a trial of your arms for this adventurous action.—Like David, you proved the armour before you would use it; and like him too, finding it cumbersome, you put it off, and betook yourself to the proper arms of a patriot, and stone your adversary to death.

But it is of little importance by what stroke, or by what weapon, an adversary tumbles, provided he be down; or rather, to speak in the language of a patriot, provided we get up ourselves. For there are a set of malicious, incredulous people in the world, who think that all this bustle about patriotism is made merely to advance the makers to wealth and honours. Those unbelievers draw their conclusion from what has happened to the arch patriot

Wilkes, and others. He has found it a thriving trade, and had he played his cards as he ought, his situation might have been even more flourishing than it is. However, there is one objection to the calling, which I think merits the serious attention of all its professors: not to deter them from pursuing it, but to excite them to find out some remedy for the evil. A patriot is not quite so necessary in society, as a baker, a butcher, or a shoemaker; because all who *can*, eat, and wear shoes; but all who *can*, do not tell lies and swallow them. Therefore should the trade be overstocked (which generally happens to those trades the success of which depends upon a temporary whim of fashion) the consequence must prove fatal to you, Sir, and many others, who are by God and Nature *made* utterly incapable of following any honest calling.

I shall suppose a case very likely to happen in the present posture of affairs; viz. That the whole nation to a man embraced the doctrine, and followed the trade of a patriot.—The same inconvenience would follow, which prevented the execution of a scheme projected by a worthy patriot in a neighbouring nation. He had observed the great benefit of trade, and the advantages

tages of having sea-ports; and in a fit of enthusiasm, equally well founded in reason, but not half so pernicious in consequence, as that which inspires our patriots, he proposed to the administration of his country to turn all the sea-coasts into ports. A scheme which I am surprised none of the common-council, who understand so well, and are so tenacious of the navigation of the river Thames, have ever adopted.

Yet, Sir, if all the sea-coasts of this country were turned into ports, and all the inhabitants of it metamorphosed into patriots, I believe neither its trade nor its government would be much mended; and though you are very little interested in the success of trade, you are nevertheless deeply concerned in the success of patriotism. Therefore I say again, look to it, and keep within decent bounds; for if you shew too palpably that a patriot may do every thing with impunity, so many fellows will enter the lists, and outdo even you in insolence and scurrility, that you will not be able to get salt to your porridge by the profession.

There was an old woman in the days of yore, who happened to form a pretty shrewd judgment in matters of this kind.

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It fell out, by an odd concurrence of circumstances, that two or three very sad, despotic administrations had succeeded to each other in her country. While the last was in power, she was overheard praying very heartily for its continuance and preservation. The person who listened to her (it was the premier himself) had honesty and sense enough to be conscious of his own demerits; and expressing much surprise at what he heard, asked her the reason of so extraordinary a prayer. She very candidly answered, that having put up her prayers for the destruction of the preceding administrations, she had always found that worse succeeded to bad; and that therefore she was now determined to pray for those in possession, lest a worse might still come. From this old woman's tale, very good political and patriotical inferences may be drawn. If you take it in an inverted sense, we ought to pray for you, the shining patriot of the day; lest, if you should be kicked down stairs, a more insolent, and a more ignorant fellow might take your place.—Or, applying this story directly as it is told, we may pray for the continuation of the present administration; for I am very sure, that if they were
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turned out, and if your party should come in, the old woman's apprehension would be fully verified.

But it would puzzle all the genealogists, and the whole herald's office, to rank and marshal the herd of patriots in distinct classes, sects, and denominations, so as to instruct us precisely to what particular class you belong. That you once belonged to the respectable society called the Bill of Rights, we all know; *but having something else to do*, you left them, and set up for yourself. It would indeed have been a great misfortune to the nation, had so eminent a patriot confined himself to any particular department. There is this great advantage attending the trade of a patriot, that every individual, and every company which trades upon a joint stock, may assume what name, title, rank, privilege, or pre-eminence he, or it chuses. A set of obscure, illiterate, and unprincipled fellows, have called themselves Supporters of the Bill of Rights; and they issue their bulls and mandates to the world, with no less ridiculous gravity, and pretensions to infallibility, than another impostor, of whom probably you may have heard.

Following the principles imbibed in
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that illustrious society, you have dubbed yourself general inspector of the laws, supervisor of the courts of justice, conservator of the nation's rights, immunities, and privileges, corrector of abuses, abridger of prerogative, whipper-in of straggling justices, and huntsman of the patriotic pack. As a specimen of your abilities in the last of these characters but one, and as an earnest of what we may expect from you in the others, you have exercised your thong upon the unfortunate judge Aston. To be sure, he had no right to leave the chace that was a-foot, to follow *vermin*. But I hope he has smarted for it sufficiently, and in time to come will stick to the game, *or keep within the record* (to use a phrase which seems to be getting into vogue, instead of that of *altering the record*, which formerly had a very great run.)

Sir Richard Aston was certainly much to blame, when he reflected on a man of your high eminence and character from the seat of justice. You are a counsel most learned in the laws, and you know (none so well) that a judge has no power and no right to discredit what an evidence says, or declare why he discredits him. If that evidence happens to be a patriot, and the question

question a patriotic question, the injustice becomes more palpable and more outrageous ; for as no man has a right to differ in opinion from a patriot, so *a fortiori*, he is less to be justified in censuring the opinion of a patriot, and discrediting his evidence. It was moreover the height of insolence in the judge, and particularly in judge Aston, to surmise, that the letter of Junius to the king contained libellous matter, after the great Robert Morris, Esq. had declared upon oath that it did not.

I am very well persuaded, that the declaration was made merely with a view to gravel the court of King's-Bench, in case they should dare to set up an opinion contradictory to so respectable an authority. For to be sure, unless in this view, the declaration of opinion in your affidavit rather seems to be superfluous, or, in the language of a patriot, *travelling out of the record*. And there may be found some people weak enough to imagine, that since Robert Morris, Esq. *travelled out of the record* to give his opinion, which was not asked, judge Aston might also make a short sally from the said record, to acquaint the said Robert Morris, Esq. that he did not believe a word of his evidence. But men

who talk in this manner are supporters of despotism, and ministerial hirelings; for true liberty consists not only in saying or doing whatever the possessor of it pleases, but also in preventing every one else from saying or doing what may give offence to the said patriot. *Sic volo sic jubeo* is, and ought to be, his motto.

To this doctrine, which is true in theory and in practice, there is only a trifling objection; viz. that if every man holds it, the empire of a patriot will never extend beyond the microcosm of his own sweet person. Every individual will stand, like the trees in Hyde Park, *single & per se*; and the blackguards will ease nature under his shade. But this is, as I have said, a trifling objection; for a patriot, like all other material substances, has a principle of centripetal and centrifugal force, a power of attraction and repulsion, which acting within him in a very complicated manner, attracts every thing that can add to his own importance. He is the sun and the centre of his own system, and he exerts every influence of his rays, to draw as many wandering planets as he can, to depend upon him, and revolve round his orb. On the other hand, he repels every

every thing that does not exactly coincide with that idea of perfection with which he contemplates himself. And by this means he keeps matters in that equilibrium and counterpoise, which promotes best his own interest.

In my deep and just admiration of the immense croud of patriotic heroes which adorn this age and nation, (more, perhaps, in number, and greater in abilities, than ever nature produced, from the beginning of time to this pupil hour) I have sometimes been led to make a comparison between them and the other trifling objects of creation. It is indeed *magna componere parvis*; but besides that, it is impossible to find an adequate simile, I have always found it much easier in my researches, to say what a patriot is like, than what he really is. So the indulgent reader, I hope, will give me leave to compare lord Chatham, lord Shelburn, the duke of Richmond, Burk, Barry, Townsend, Oliver, Bernard, Bellas, Wilkes, Humphrey Coates, Almon, &c. &c. &c. and Robert Morris, Esq. (though last, not least) to so many suns shining in our political firmament, and dispensing their warm influence, each on a particular set of satellites.

lites. Most of them have their Jupiter, their Mars, their Mercury, and their Venus ; their rings, their *borns*, and their belts ; only it seems to me, that Robert Morris, Esq. has not yet been able to draw any thing into his vortex, but a pretty little moon, under whose influence—he writes.

To prove that he does not govern, but is governed by this chaste mistress, one need only read his letter to Mr. Justice Aston ; the general design of which is truly patriotic and political. The people of this nation have been hitherto led by an odd antiquated notion, that a judge, in delivering his opinion upon a case before him, might say he did not give credit to such a witness, and also give his reason for that opinion. But Mr. Robert Morris, without learning, precedent, authority, or argument, but by the mere strength of his natural parts, has clearly demonstrated that notion to be false. Many great advantages will result from this excellent discovery and demonstration ; but the chief is, that no judge, it is to be hoped, hereafter will dare to express his opinion upon any matter of evidence that comes before him, especially if it should happen to reflect

flect upon the person or character of a patriot.

I am only afraid, that the recoil of this excellent discovery may by circumstance hurt the patriots themselves; for they are not the most tender of other people's characters; and there are many liars in the world, if the doctrine of telling and writing the most infamous lies, be not the best piece of artillery they have to employ against their enemies. There are several patriots also who attend the bar, not in the quality of culprits; and Robert Morris, Esq. is one of these; at least he says so, and I believe the world must take it merely upon his affirmation. Now, suppose a wrong-headed fellow should construe any flower of his eloquence (nor do I doubt his eloquence) into a personal affront, and should chuse to tweak him by the nose, or lop off those very ears with which he heard the indignity offered by judge Aston to his patriotic importance; it might happen that a tye-wig, or even a full-bottom (were he dignified with an office under the crown, or desirous of such distinction, which to be sure he is not, as he says) would hardly cover the disgrace.

In this supposed case, I am afraid the
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distinction of the patriots would hardly be allowed; for there are men so wrong-headed; and so deaf to the voice of reason, that it would be in vain to alledge to them. We patriots have a right of saying what we please; but it does not follow, that judges, and other ministerial hirelings, have the same right.

But this is a matter which concerns the patriotic barristers, and those who aspire to the rank of patriotic judges, not me. I shall therefore proceed with Robert Morris, Esq's. letter, which I dare say will procure to its author that honour and profit he so well deserves; and, amongst other reasons, on account of that universal knowledge which he seems to have of the laws and proceedings of other countries, equal at least to that which he has acquired in the laws of his own. Scotland, for instance, (which indeed, in judicial proceedings, is a foreign country) he knows how matters are carried on there, *ad unguem*, to a nail. The proceedings there in courts of justice are close as a corked bottle; they have no juries; all is shut up; and what they do is too sacred for an open comment. To be sure, a man who calls himself a barrister, and who has so clear and perfect a know-

a knowledge of the law-proceedings in a country so near, and so closely connected with his own, must be a perfect adept in the profession which he follows; and he must also be a very clear-sighted politician, who can discover great and imminent danger to the liberty of the press, in the present situation of things. These inveterate prosecutions, these sanguinary proceedings, which are carried on to prevent and check honest and worthy men from abusing and defaming such trifling people as king, parliament, judges, ministers, &c. have at last roused the patriotic spirit of Robert Morris, Esq. to stand in the breach, and defend our liberties against arbitrary power. But it happens a little unfortunately, that he did not draw the sword till he was wounded in his own person, by a rebound of that same freedom of speech, of the restraint of which he complains.

These contradictions are, like the father that begot them, open, gross, and palpable. If Robert Morris, Esq. and his friends have a right to abuse and defame every thing that wise men hold sacred and inviolable; if he thought himself well authorised, in an affidavit on matter of fact, to give an opinion, that Junius's
letter

letter to the king contained no libellous matter; why the devil should not judge Aston, or me, or any man, have the same right to tell Robert Morris, Esq. You are a knave, or a fool, or both? If it be a sufficient reason for him that he thought the one, it is sufficient for me that I think the other; and I imagine, that if numbers would add any weight to an opinion, as many would back judge Aston or me, as Robert Morris, Esq. could bring into the field, in support of his parenthesis.

It is a foolish bird, they say, that bespits its own nest; and there are who suggest, that Robert Morris, Esq. has a strong resemblance to such uncleanly fowl. He tells us, in the tenth page of his Letter, (and we must believe he tells us the worst) the words made use of by judge Aston. He lays a strong emphasis upon **THAT MAN**; as if it had been an affront to his dignity to be called a man. Very possibly judge Aston erred when he gave him the appellation of a man; however, Robert Morris, Esq. may discuss that point with his landress. But if Mr. Morris were that sort of man whom they call a grammarian, he would have been less offended at the appellation; for it is not spoken as de-

demonstrative of him, pointing him out in a reproachful way, as if the judge had said, *that man there*, or, in the patriotic idiom, *that there man*; but relatively, viz. " *that man who had* (though but in a parenthesis) put into his affidavit, that he did not think the letter signed Junius to be a libel; I shall, for my part, pay very little regard to any affidavit he should make."

Certainly the expression, in every sense, carries an idea which might hurt the pride of a patriot. Though I think Robert Morris, Esq. has rather made a confession, that he felt the thrust home, when he explains the meaning of it in his own terms. A man of very jealous delicacy on the point of honour, ought never to commit himself by the implication of a construed affront. If Mr. Morris had lived in the world, he would often have found the necessity of softening the sense of harsh expressions, instead of turning them to a worse. But the hot head of a law patriot, kept in a continual buzz by *law conversations*, in *law coffee-houses*, and *law-dinners at law taverns*; his invention and imagination perpetually employed upon abstract and futile disputes; his blood irritated and inflamed with unprofitable and

illiberal reading ; with the ungentle altercation too common in the inns of court, render him incapable to attend to those conciliating distinctions, which he ought to be so much personally interested to make, and which men of the world find it necessary to make every day.

The misfortune of the case is, that in these disputes, the disputants proceed no farther than hard words, and scurrilous names, if in private ; and if in public, it ends in a pamphlet, by which no body gains but the bookseller, and in which the party generally bespatters himself more than the person whom he writes against hath done. Such has been the conduct of Robert Morris, Esq. In the heat of his resentment, to which I will add the promise to his friend (who I hope will perform his part, by calling judge Aston to account in another house), he has not perceived, that by the strong sense he has put on the judge's words, he exposes himself to a worse censure than could be meant, or indeed than the words in fair construction implied.

A thousand people, who never would have thought of this matter, and who, even if they had heard of the censure, would

would have considered it in no other light, than as a strong expression of a judge's disapprobation of a false opinion given by an evidence, when he had no call to give it; I say, a thousand people will now, upon the authority of Mr. Morris himself, put the same construction on the words that he has done, and believe him to be no better than he has represented himself.

There are in England many, very many wise, just, and good men, who firmly believe the letter of Junius to be a false, a scandalous, and an infamous libel, wrote and published for most diabolical and detestable purposes. All these men must think, not in the highest manner of Mr. Morris, either as a lawyer, a subject, a Christian, or a gentleman, for going out of his way to give his opinion upon oath, that it did not contain libellous matter; but what must they think now, after the interpretation Mr. Morris himself puts upon a judge's censure of that opinion? I will not declare what I imagine their sentiments will be; but I know in general, that it is a capital error to take a strong expression too warmly, and to interpret it

into a direct charge to impeach the honour or honesty of the interpreter.

Mr. Morris is pleased to ask, whether judge Aston's words can bear a different import from that which he himself puts upon them? To which I answer, they most certainly will. I have already mentioned one other sense, and I shall mention another. I do not mean to dwell on the difference between paying *very little regard*, judge Aston's words, and *deserving no credit*, which are the words of Mr. Morris; for though there is a material difference between them, to dwell upon it might be thought a refinement. But there are many reasons, besides an abandoned conscience, which take from the credit of an evidence in a court of justice. There are defects of the head, as well as of the heart. If Mr. Morris labours under the *former* of these, he is injurious to himself by applying the judge's censure to the *latter*. I could refer him to the books of evidence, which are full cases of objections both to the competency and credibility of witnesses, which do not impeach their conscience at all. Some of these objections lie in all cases, some in particular cases.

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Suppose a man intelligent, rational, and cool, in his general conduct and behaviour, but on a particular point, wild, incoherent, furious, and mad; would that man's credibility, in a question on that point, deserve equal credit with his evidence given upon any other? To be sure not. Suppose, also, his violence to be such, that he had gone out of his way to declare his opinion upon that point; would not this still take from the credibility of his evidence? Suppose that opinion to be, in the sense of all reasonable men, a wild, inhuman, and dangerous opinion; might not a judge say, that the affidavit of such a man deserved very little regard? Suppose the same man's madness should impel him to construe the saying of the judge into a charge against his conscience; would not this be a strong evidence to corroborate the opinion of the judge, that the affidavit of such a man, in such a case, deserved very little regard?

All these are supposable cases, because they have actually happened. Mr. Morris, whose intellects, if I may believe report, are none of the soundest, is mad as a March hare, with many others, on the head of patriotism, and an ideal reformation

tion of the state. Some people do him the credit to believe, that he is one of the few patriots who are conscientiously in the wrong. I am very willing to allow him that merit; but I will not allow him to have been a witness, *omni exceptione major*, in the case of Almon; and yet I will not say, that he is in general a man of such abandoned conscience, as not to deserve credit in a court of justice. He may call his own honesty in doubt, and make others doubt it; if he pleases; but I, for my part, will defend his virtue, at the expence of his understanding.

If men in the world should act as he has done, we should have cutting of throats every half hour. The wisdom of men of honour has established a refined manner of considering these matters, which men of law would do well to adopt. It is impossible for men, in the warmth of conversation, to guard their expressions, so as that they may not be wrested, and without very great force, to imply an affront; and therefore they have wisely made the essence of injuries of that kind to consist in the expression. It often happens in conversation, that a matter of fact asserted by one, is doubted or disbelieved by others,

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who make no scruple to express their doubt or disbelief in such terms as convey a very plain sense, though not in the formal terms of affront. I cannot believe what you say, and you *lie*, mean pretty much the same thing; and yet the first would scarcely ruffle the temper of a man of any decent coolness; but the last could only be washed out in the blood of the speaker. To hunt a vague and general expression of disapprobation, or disbelief, through all the predicaments, till you fix it into a palpable and gross charge, would be like the reasoning of an honest parson with whom I once happened to drink. A gentleman in the company gave for his toast, the angel of the church of Rome, meaning a very pretty Roman-catholic girl in the neighbourhood, known by that appellation. The parson objected to the toast, and swore a great oath, that he would not drink the Devil. The Devil! cried every body; how's that? Yes, replied the parson, the Devil. Don't you all know, that the angel of the church of Rome is the Pope, that the Pope is Antichrist, and that Antichrist is the Devil? There could be no answer made to this chain of reasoning; and here was a very

innocent and very handsome wench demonstrated, by mode and figure, to be what we believe very much the reverse; for by the best accounts we have hitherto had of the Devil, he is neither young, handsome, nor innocent.

It belongs to Robert Morris, Esq. to make an application of this story. For me, I shall proceed by and by to examine something more important than the sense he may put upon judge Aston's censure. It is of no great consequence to the world what was said, or how it is understood; but if Mr. Morris be so exceeding tender of his reputation; if he really thinks that a man's character ought to be dearer to him than his property, why should he attack the characters of those, whom he does not accuse of having impeached his? I should imagine, with great submission to the rank, character, fortune, abilities, and high pre-eminence of Robert Morris, Esq. that the character of a king, or even of a lord chief justice, is an object fully as worthy of *their* attention, and perhaps of the public attention, as his may be. Now if Mr. Morris had set out upon the principle of the *value of characters* (which he has only picked up upon the road, and

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employs as a weapon of offence and defence) he perhaps would not have been exposed to the little mortifications he has met with, and will probably meet with if he continues to hack and cut all about, with this same characteristical club.

A man whose nerves are of that firm contexture, that he finds no libellous matter in Junius's Letter to the king; who attacks the chief justice of the King's-Bench, without provocation, without evidence of fact, nay against evidence, upon the mere suggestions of a perturbed and distempered imagination; whose false accusations are no less absurd, than his expressions are rude, clownish, and illiberal; such a man, I say, complains with a very bad grace to the public of any liberties taken with his character.

But it still recurs to the old story, the king and the chief justice are fair game: but touch not a patriot. In his person, in his character, the constitution, the laws, and the liberties of the nation are wound up; and if he be injured, all are in danger. Formerly the clergy had a cry of this kind. If any laic had a dispute with a clergyman, the danger of the church was immediately sounded; and this went

so far, that we were obliged at last to pull the church down in good earnest, to prevent her from falling ; or to get rid of the constant alarms we were kept in by a set of men, who made use of her name to protect them in the pursuit of their interested passions.

The same thing will happen to our patriots. They have already, and they will still so grossly abuse the cry of liberty and the constitution, that I am afraid there is great danger to both. No man can see to what execrable purposes these sacred words are every day prostituted, without conceiving a holy horror and indignation ; and no man accustomed to look into the chain of causes and effects, does not tremble for the consequences to this nation. I, for my own part, could pardon our present patriots, for being, with a few exceptions, a set of the most despicable and most abandoned men that ever brought disgrace upon any age or nation ; but I cannot pardon them for the misery they strive to entail upon their own posterity, as well as on ours. If they could be punished alone for their crimes, we might pity their misfortune, but we could not arraign the justice of their sentence. But
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in these cases, the crimes of a few drag millions of innocents into the abyss of perdition; and yet, if we suffer them to proceed, I don't know whether we have a right to call ourselves innocent, or to think they have brought upon us an injustice or a hardship. If we do not resist them, if we do not endeavour to hunt them down as common enemies of mankind, if we do not, upon all occasions, unite in a testimony of our abhorrence of their designs, we are culpable in a high degree, and our children may lay their misery at our doors.

Whether the world, or any particular nation in the world, be now more abominably wicked than in any preceding period, is a matter of great doubt. A man must have lived through all the ages of it, to be able to fix that point. But if we are to judge from the histories of former times (which I confess are full of doubt and uncertainty, and very little characteristical of manners) I should conclude, that this is an age of infamous vices, which is generally the harbinger of one of illustrious crimes. The futility and inanity of our political disputes, and the sordid baseness with which they are carried on, at the same time that they give a despicable idea of

our characters, will produce the same effect that more manly and open attempts would have done. The road, indeed, is different; for we are now on the direct path of anarchy, confusion, languor, and debility; we are sinking into a nerveless, inanimated state, where we shall remain till swallowed up by some foreign power, or till there arises some favourable circumstances, to be embraced by an enterprising genius, to re-animate the lumpish and brutified mass.

Men talk of a dearth of genius; and that certain ages (which generally precede the revolutions of states) are barren of great abilities. This is an idle conceit. There are ages in which angels can do nothing, and ages in which the poorest of the human species perform the actions of heroes and demigods. Circumstances do every thing; and I am bold to say, what every man's experience and reflection will evince, that the tempers and characters of the governed have more influence on the prosperity of the state, than the abilities of the governors. A man, decorate him with what title you will, is but a man; and if he does not find in the disposition of the people over whom he presides, that

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submission which is necessary to produce the ends of government, it is of very little consequence that nature has endowed him with great virtues and abilities ; these will be useless, and perhaps detrimental. I put the case of a single person, because, whether the government be in the hands of one, or of five thousand, the disproportion between the natural powers of the governed, and *theirs*, will be pretty much the same.

Therefore whenever, by a concurrence of circumstances, as it has happened in this nation, a considerable part of the people shall believe themselves wiser than those who are set over them ; whenever every individual shall assume the right of dissenting, of condemning, or approving every measure of state ; when, from that vague and confused idea, which all men have, of a perfection beyond what they see in the œconomy of the world, every man shall set up for a reformer of abuses, and impose his crude and imperfect notions for wise and salutary maxims ; all must go into immediate confusion. In the clashing of many incoherent and contradictory opinions, first principles are sure to disappear ; and the abuse of human rea-
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son produces worse effects, than ever mankind felt from the neglect of it.

But this reasoning, carried too far, would lead to a conclusion equally fatal on the other side. Taken in an unlimited sense, it would exclude all enquiry, all investigation, and brand with the name of innovation, every reformation and improvement that has been made. I confess there is nothing so difficult in politics, as to draw the line where discussion ought to stop ; but that it ought to stop somewhere, I believe no reasonable man will deny. My sentiments of this matter I shall give afterwards : in the mean time, I hope I shall be allowed to observe, that all the differences, disputes, wars, and revolutions that have afflicted the world upon political questions, have arisen from this fatal and universal error, of taking and understanding general propositions in an universal, unlimited, and unbounded sense.

Of old, this was the error of the favourers of despotism. No man of common understanding ever yet, from favour or affection to another, strove to make a whole nation pay implicit obedience to that other. But seeing the necessity of obedience, for the preservation of society,
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and the order and harmony of the state, the impression of that first principle was so strong upon the minds of many, and so entirely possessed them, that no room was left for the idea of a modification, to temper the rigour of implicit obedience, by a political freedom, founded on known and established laws.

Hence arose a set of principles, the application of which made sad havock among our ancestors. The abuse that was attempted to be made of them occasioned their overthrow, and established another system, proceeding from an opposite source; which, though perhaps more manly, more liberal, and more consonant to right reason, is nevertheless liable to the same abuse; of which we that now live are very likely to know the experience.

The men who call themselves patriots, and who of all men in the world least deserve that name, have imbibed a notion (a true one in itself) that liberty is a very fine thing. Setting out upon this principle, they conclude, that every restraint upon liberty is a violation of that inestimable blessing. They do not consider, that there are numberless modifications and gradations between unbounded liberty on the

the one hand, and servile subjection on the other; far less do they consider, that both extremes produce the very evil, which those that run into them, intend to shun. All men cannot, in the nature of things, have a power of saying and doing what they please; because it could not happen; but that, in the exercise of this power, every one would offend another; and, from the opposition of every man's will, all the horrors of anarchy ensue.

Therefore, in a state of society, there must be some fixed rule, whereby to decide how far the natural liberty of one man is to be restrained from encroaching on the natural liberty of another; and it is in the exact adjustment of this rule, that social and political liberty consists. The constitution of this kingdom, as established at the Revolution, was fixed as near the precise point of equipoise as, humanly speaking, it could be. However, it carried on its bosom that germ of destruction, which attends all human institutions. Whether it were, that the framers of it relied too much on the force of opinion, and the idea of regularity, subordination, and order, which all men naturally have, and therefore left too little real power

power in the executive part of the government; whether it is, that the means which the executive part of government has been obliged to employ, in order to supply that defect of real power, are in themselves destructive of manners and morals; or whether it was not foreseen, that the unlimited power of discussing publicly every sort of question, might become a very dangerous weapon in the hands of the wicked and designing; I will not take upon me to determine: but I will affirm, that, from one or other, or perhaps all of these causes, the indecent, the shameful confusion in which we have lived for some years, has undoubtedly sprung.

I do not chuse to dwell upon what I think will be the consequences of this confusion; and I shall only say a word of the immediate causes of the present disputes, as they relate to political matters. What ought to be more alarming to every man who wishes well to his country, his family, or himself, is the effect they are likely to have on the juridical powers of the constitution; and it is to explain these, that I am induced to offer my thoughts to the public. As for Mr. Morris, he must excuse me when I tell him, that he is too

inconsiderable ever to have engaged me in a task of this kind. I make use of his name as a vehicle to my sentiments ; and I address my letter to him for the same reason that lord C—d—n addressed his, upon Libels, to Mr. Almon, viz. because he did not understand a word it contained : neither do I consider Sir Richard Aston in this matter. Had they been both barristers, they might have clapper-clawed one another in whatever manner best suited their taste, till the world had been tired of laughing at them. But I consider Mr. Morris's letter as the most audacious attack upon public justice, which even this age has seen ; the most open violation of all that men ought to hold sacred ; and pregnant with the most pernicious consequences. I cannot conceive a more dreadful situation, than that in which a nation stands, wherein such things are not punished, wherein they are done, wherein there are men capable of conceiving the idea of them, and daringly avowing it.

When I speak of punishment, I do not mean legal punishment. That could have no effect, or, if any, a bad effect. The punishment I have in view, is that shame and universal abandon of all good men, which

which used to be the constant attendant of wicked actions. But if we could suppose, that the impious principle, which seems to have instigated Mr. Morris, had got footing among the people, public punishment would only confirm them in their error. It has often happened, that the most absurd and dangerous tenets in religion have been adopted by the wise, merely because the ignorant wretches who broached them, in the effervescence of a distempered imagination, were persecuted. Perhaps the same thing might happen in political heresies; and indeed, if we are convinced by experience, that there is no opinion so ridiculous, so impious, foolish, and extravagant, but that men, who have not past for fools in their day, have held about religion, why may not we suppose the same thing to happen in politics?

There is a reason peculiar to this country, which renders this supposition more natural. Mens thoughts are less occupied about religion here, than any where else under the sun; and the people of this kingdom are the most restless, unsettled, dissolutive people, that history has given an account of. I do not mean a reflection upon them when I say so; on the contrary,

trary, I attribute all our improvements, our discoveries, and the great height of power to which we have risen beyond any proportion to our extent of territory, or our numbers, solely to that cause. To it also I refer the excellent form of our constitution : but I am afraid it will also occasion the destruction of the constitution. However that may be, the people of England being no longer zealots in religion, are become zealots in politics. Every man broaches his own notions in matters of state ; he sets out upon some known and established principle, from whence he deduces the wildest and most extravagant conclusions ; he reasons upon them in his *club*, and is confirmed in them by contradiction ; the rather that as it is ten to one but his antagonist is more absurd than he. He perceives the fallacy of the argument against him, without seeing the objection to his own. He publishes his opinion in the news-papers, and so it becomes a matter of general discussion. It meets with many who adopt it implicitly ; some vary a little from it ; others build a new superstructure upon the same premises ; and some reprobate it intirely. And thus, as many sects, heresies, and opinions prevail in

in politics; as ever afflicted the world in matters of religion.

If all these vain and idle notions were left to themselves, they would die of themselves; but if they are taken notice of by government, and the authors of them, who ought to be laughed at, are persecuted, they often become favourite opinions among the people. Yet I would not have the patriots to exult in the concession I now make. Many of them, at this hour, have no better reason to give for their obstinate and devilish attempts to overturn the constitution, than that obscure and ignorant men have been persecuted by government for holding absurd opinions. This is as much as to say, because government has erred, I will do what I can to bring ruin on my country and myself; that government may be involved in the general destruction. What would these men say of a son, who set his father's house on fire, with himself in it, to be revenged of the father for having beaten him for a fault, which it would have been more prudent to wink at.

Nevertheless, though I am an enemy to persecution, both from motives of humanity and of prudence, I am of opinion
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that government has erred more in the plan and form of the prosecutions, and even in the choice of objects, from amongst the present disturbers of the public peace, than in the prosecutions themselves. A vigorous and severe exertion of public justice, upon the authors of our present disputes, at the beginning, would have had a most salutary effect. And yet I do not blame government because it did not pursue this method. There is nothing so difficult as to act properly in these cases: no general principle will apply to them. What at one period would produce a particular effect, at another would be followed by the contrary. Circumstances decide every thing; and it is only after the fact has happened that we can say, with any degree of certainty, such and such things would have prevented it. Ignorance can reason better *a posteriori*, than wisdom *a priori*; and this shews how ridiculous those men are, who, after the event, censure and arraign the conduct of those, who had only problematical grounds to go on.

But there is another reason for the growth and increase of extravagant opinions in religion and politics, besides persecution; and it is this which has raised
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our disputes to the present height. All wild and absurd tenets are the production of weak understandings, and fervid imaginations; and if left merely among men of the same stamp with their authors, they would never be productive of much political mischief. But the misfortune is, that in all nations, and in this more than in any other nation, there are a set of men of interested tempers, cool, deliberate, active, designing, and able. These men are ever on the watch, eagerly to seize the slightest occasion to raise themselves to their darling objects of wealth and nominal honours. If it happens (and it must happen in the immensity of different notions every day exhibited to the public) that there is one which carries in it but a single ray of hope, that it may be useful to their designs, it is immediately seized upon by them. They clear it of the rubbish with which it is surrounded, lick it into form, nourish, rear, and send it into the world, with all the countenance and support which it can draw from their art and abilities, or derive from the folly and ignorance of those, whom it is tricked out to deceive. In a word, it is treated in the same manner, and ushered into the world

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with the same advantages, that a young, impudent, Irish fortune-hunter has from a club of that nation, which I am told exists at present in this metropolis.

How true this is, will best appear from a short recapitulation of the rise and progress of our present animosities. His present majesty ascended the throne in circumstances apparently favourable, but in reality entirely the reverse. The nation was utterly drained of men and money by a war, which, though just and necessary in itself, and successful in its operations, had nevertheless been carried on with so little judgment, prudence, and œconomy, that our repeated victories did us more real injury, than could have attended the most signal defeats. The man who then held the reins of government, in the character of minister, might well be called a second Phaeton; the same temerity and confidence in himself, the same ignorance of the office he undertook, where he was going, or what he was about. The intoxication which always attends victory, opened to him the sources of wealth. The parliament voted extravagantly, and the nation furnished madly. When I say so, I do not mean the stock-jobbing part of it; for

at no period, either before or since, was the national credit so low; at no period money was ever borrowed at such shameful and extravagant usury. This produced two very fatal effects: the first, and worst, was real impoverishment; the second, erecting into consequence and consideration a swarm of blood-suckers, who having fattened on the spoils of their country, were loth to forgoe their prey; and were ready to move earth and hell, whenever it should be attempted to be snatched out of their fangs.

Other circumstances conspired. Under the reign of his majesty's royal predecessor, the heir-apparent of the crown had been shamefully neglected and deserted. The weak and despicable policy of excluding him from all participation and connection with public affairs, made the then ministry think they had done a very clever thing, when they shut him up in retirement with his governor. This governor was a man of private virtue, of taste, and of letters; a politician, too, in his way, but not such as the times demanded. His virtue was austere, and his notions of government ideal and romantic. He adopted lord Bolingbroke's system of a patriotic

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reign ; and with these principles, grafted on a most excellent natural disposition, his present majesty mounted the throne.

It happened that the governor had vanity enough to believe himself able not only to conduct the public affairs, but to conduct them upon the principles of his own Utopian plan. The object was great and beautiful ; but a little knowledge of the world (which at his time of life he ought to have had) would have shewn him the execution of it was impossible. The youth and virtuous disposition of the king aided the illusion, and enabled the earl of Bute to attempt the execution of a project, first conceived by the archbishop of Cambray, in nearly parallel circumstances ; and from his time received with great admiration, and considered as the greatest effort of human virtue, because by the death of his pupil, the duke of Burgundy, an opportunity of evincing its impracticability never occurred.

However, the king and his minister set out with a measure, in which the public utility and safety no less concurred, than those principles of virtue and humanity, which were the foundation of their system ;

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I mean the bringing about of a peace. It was made upon terms of great honour to the nation, and great advantage, if extent of territory be an advantage. I know that this is the very point which was disputed, and the ostensible cause, at least, of all that has followed. But I am willing to stake my credit upon the assertion, certain that, when party rage subsides, cool and sober reflection will see it in this light. I shall only here observe, that when the nation was borrowing money at near forty per cent. premium, and so exhausted of men, that when the army wanted 23000 recruits, and that in nine months only 1300 could be raised in the three kingdoms, a peace would seem to have been no inexpedient measure. On the other hand, the war began about some contested lands on the back of our American settlements, and the peace left us in possession of the whole northern continent of America.

But it has been said, that we ought to have had more; to which I answer, we had a great deal too much. *Grasp all, lose all*, is a proverb often verified in the affairs of the world; and would it not lead me into a very long detail, I could demonstrate, that when the peace was

made, we were in an infinitely worse situation after our victories, than our enemies after their defeats. Be that as it may, whoever made the peace, will be one day considered as having done an essential service to his country. No body lost by it, but the subscribers, stock-jobbers, and contractors, who had enriched themselves during the war. But by the prodigious extent of our public funds, and the universality of our warlike operations, the subscribers, stock-jobbers, and contractors were a very formidable body, both in numbers and influence. They had ingrossed a great part of the riches of the kingdom; and every body knows, that whoever is rich is powerful. They of course could not bear the thoughts of peace; and they exerted all the influence, which the money they had gained in the war gave them, to hinder it.

They were joined in this by the minister who had carried on the war. If he did so from principle, as not seeing the necessity of a peace, I should not be surprised; because mad men never look into consequences. If he opposed the peace from less honest motives, I should still be less surprised; because his conduct through life

life has given, on every occasion, the lie to his public and warm professions of zeal for the public good. He never had a motive, save the gratification of an ill-formed, restless, and turbulent ambition; and he has constantly employed, to the ruin of his country, those powers, which, if attended with integrity and sound judgment, might have gone far to prevent the evils which now hang over her.

With him, and with the stock-jobbers, all those needy and intriguing spirits whom I have already mentioned, united their efforts. The hopes of being bought off by administration, rendered them no less zealous and violent than the others; for it is well known, that every man's price in our political world, is in proportion to the clamour he is able to raise. However, amongst this last class, there was a man too needy to stand off. He had got a seat in parliament by a last desperate effort; but as the situation of his fortune did not enable him to *speculate upon time*, so his parliamentary talents were not of that kind which could raise him to any considerable height. Nevertheless he had a vote, and he was capable of some other services too necessary in this country. But
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he passed for a man of thorough depravation of manners, without principle, without religion, and without that which often stands in the stead of both, common decency.

This man offered his service to the minister, for a very trifling pecuniary consideration; but in pursuance of the plan of virtue adopted, he was refused. My lord Bute was weak enough to believe, that this nation might be governed upon pure patriotic principles, and without those helps which good politicians derive from the interests and passions of individuals. He imagined that no man needed to be bribed to his duty; and that a bad man rather brought a disgrace on a party, than strengthened it.

Whether any of that bitterness, with which we often see a virtuous, but narrow-minded man, treat those of professed vice, was mixed with my lord Bute's refusal to enlist Mr. Wilkes under the banners of administration, I cannot tell; but it is certain from that moment he vowed vengeance. His principles were no hindrance to him in the prosecution of his revenge; and the disappointment of his last hope to better his fortune, made him

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undertake a very desperate game ; but the event has fully justified the attempt.

It happened that the earl of Bute was a Scotch peer, and of Scottish extraction, though born himself in London ; and as the first expression of Mr. Wilkes's resentment was most probably, *Damn his Scotch blood*, so it is equally probable, that the idea started by this blackguard and random expression, has been the cause of all our subsequent evils. His malice presented to him the plan of an attack upon the minister in this vulnerable part. The animosity which, for political causes, had subsisted of old between the two nations of England and Scotland, had now greatly subsided. However, there remained a leaven, which, wrought up with a skilful hand, might still be brought to a fermentation ; and no better hand for this purpose could be found, than a man lost to all principle of sound policy, of justice, of humanity, or liberality.

Yet one would have thought the time rather unfavourable for such an attempt. We had just emerged from a war, in which the Scotch had conspicuously distinguished themselves. That part of the kingdom
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had furnished above *ninety thousand men* to the common cause, during the course of it; (a prodigious number, to those who consider its extent, and the number of its inhabitants.) I would not chuse to say they were our best men; but I may affirm, upon the authority of the public opinion, that we had none better, either by sea or land.

Nevertheless, this merit was soon obliterated by a paper called the North Briton, professedly written to abuse and defame the Scotch. Its success went even beyond the author's most sanguine hopes; and he was encouraged to extend his plan of defamation, and to include the most respectable names and characters. The madness of the people became epidemical; nothing so false, nothing so unjust, nothing so monstrous, that did not go down with them. Many who despised the work and the author, took advantage of the flame he had raised; and at the period in which I write, a man, who has been chancellor of England, is found mean enough to endeavour to keep up the ball; and to add to the shame of a news-paper essay, the illiberality of an endeavour to oppress the

first character in the nation, with the weight of an argument, which even Wilkes himself is now ashamed to maintain.

I have often been at a loss to determine, whether the folly and injustice of this part of the kingdom, or the patience of the other, was most to be wondered at. Certainly both were very extraordinary; and I should be almost tempted to think, that if the evil genius of these realms inspired the *one*, its better angel whispered to the *other*. But this is delicate ground to tread upon. Every well-wisher to both must regret, that a breach was attempted to be made; and it will be his ardent prayer to heaven, that the effects of it may be buried in perpetual oblivion. Had it succeeded to its full extent, both parts of the island had been undone; as matters stand, that harmony which produced such great effects, during the short while it lasted, is now destroyed, and perhaps may not be so easily cemented again.

Yet the author of this cruel injury to the kingdom became the idol of the people, and almost as powerful in the streets of London, as Massaniello was in the streets of Naples. It would have been a lasting disgrace to government had it not

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interposed; but it would have been much better that the madness had taken its course, than that the expedients which were fallen upon to bring this man to justice, had been attempted. While he was every day committing crimes, for which the law had established a punishment, he was attacked for a crime which he did not commit, at least in a legal sense. However he did not chuse to stand the consequences of the prosecution, but retired to France. This indicated that he wanted spirit for the part he had chosen to act, but did not put an end to the dispute. The game was now a-foot, and every miserable fellow who could tagg a sentence together in the news-paper, exerted himself in the most infamous abuse of the Scotch, the ministry, and the king. They chose (and indeed it was the interest of the faction) to represent his majesty and the ministry as united with the Scotch, to throw an odium upon government in general; and every man, whose self-love whispered to him a desire of getting forward in the world, joined them. Hence many were advanced to the highest offices, who scarce had pretensions even to the lowest. For, with a timidity unparalleled in

in history, the minister deserted his post ; and from that day forward, whoever the ravings of the mob took a fancy to applaud, was sure of office and power.

Encouraged by the success of his faction, Mr. Wilkes returned to England ; and then was seen, what never had happened in this kingdom (and what I hope will never happen again) an outlaw ; a man, divested of the rights of a subject by the laws of his country, publicly pretending and canvassing to represent the metropolis of the monarchy in parliament : while, to the disgrace of government, no steps were taken to put the laws in execution. But the lasting ignominy which would have covered this nation, by the success of Mr. Wilkes, was prevented by the prudence and activity of a city magistrate.

Soon after, a more serious alarm was raised. Hitherto, nothing very unconstitutional had been attempted by the faction. It was mean, illiberal, and impolitic to abuse the Scotch, who certainly reaped no advantage from lord Bute's exaltation. Yet that abuse rather impaired the *perfection* of the constitution, than struck at its vitals. To write and bully minis-

ters out of office, must often happen in such a government as ours, and has its advantages to counterbalance the mischiefs it may occasion. To attack the person of the king (and of such a king) and in the manner his majesty was attacked, disclosed the height of folly, injustice, savage fury, and impiety ; but could be attended with no very bad consequences, because the purity of his political and natural character rendered him invulnerable.

Therefore nothing strictly unconstitutional had yet been attempted. But the spirits of the mob were prepared by these preludes to something more important. I do not believe that any fixed design was formed by the heads of the faction ; they were jumbled together by chance, without the connecting tie of any principle, religious or political, common to them all. Every man stood for himself ; and no man cared what he did, provided he promoted his own interest. The factious demagogue of one day threw out fire and fury against the measures which, as a minister himself, he pursued and defended on the next. Those of his former party, who had not been able to get *in* with him, redoubled their rage from the envy of his suc

success ; and had the striking advantage against him, of that personal reproach which attends the changing of sides, and unsaying what had formerly been said.

In the midst of all this, the understandings of the people were bewildered, perplexed, and confounded, and their passions were inflamed. The incoherent and chimerical tenets every day offered to, and devoured with avidity by the public, made them soon lose sight of all principle. This is not to be wondered at ; but it is very much a subject of wonder, that though they every day saw, what they thought the cause of liberty, deserted by men, who had pretended to be its most zealous defenders, they should nevertheless repose the most unlimited confidence in the first comer, who took it in his head to step into the deserter's place. A whimsical Frenchman has said of the people of England, that they believe nothing they see, but every thing they hear ; and, however odd the saying, it is true, as applied to this subject ; for though they have been deceived by every patriot whom they have made the god of their idolatry, from Pultney down to Pitt, yet they are at this moment as open as ever to be duped by
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their ears, against the testimony of all their other senses.

In the critical moment, when all sound principles of the constitution were unhinged in the minds of a great many men, and they were ready to adopt the most extravagant notions, the outlawry of Mr. Wilkes was reversed; and he became, with the assistance of some of his party, who furnished him with a nominal qualification, intitled to stand candidate for the county of Middlesex. His good friends, the blackguards of London, were determined to support his interest, by deterring every respectable freeholder from appearing at the election. What followed, every body knows; his repeated elections, and the repeated resolutions of the house of commons not to receive him as a member.

These resolutions occasioned an attack upon the legislative part of the constitution, no less violent, no less outrageous, no less unjust, and much more dangerous, than what had been made upon the executive powers. Happily for the kingdom, the king stood in the breach between the mob and the legislature. The faction was forced to fly to the prerogative of the crown, to wreck their frantic resentment
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against the representatives of the nation ! Against the house of commons, the natural and constitutional bulwark of the people's rights, from the power of the crown, and the weight of the aristocratical body ! If, by the king's interposition, the independency of the house of commons had received a wound on that occasion, or if the house of peers had presumed to controul their proceedings, the balance of the constitution would have been that moment overturned, and we should have been at this hour involved in all the horrors of a civil war. Happily, therefore, I say, the king was not swayed by any consideration of the interest of his crown, as contradistinguished from the interest of his kingdom ; and happily the house of peers paid no regard to the portentous, unconstitutional motion of that madman, who has so long perplexed the councils, and ruined the affairs of this nation, with the specious shew and language of a patriot.

To enter into a discussion of the merits of the Middlesex election, would be reviving an obsolete dispute, and wasting words to no purpose. Much was argued upon the power of parliament ; but I think the result of all was, that the house of

commons possessed, by the law and practice of parliament, a power of expelling and incapacitating its own members. But, owing to the error which I formerly mentioned, of taking every principle and proposition in an unlimited and universal sense, the friends of Mr. Wilkes argued, that, admitting this, a minister who had once got a majority, might expel, and render incapable, every member in opposition. They did not see, that the argument might be retorted, and applied to every body and tribunal of men, in whom a right of judging ultimately rests; for as all human affairs must be ultimately decided somewhere, those in whom the ultimate power is placed, though they may abuse it, they never can be supposed to do so intentionally; and if they do, it must be a very flagrant case indeed, clear of all ambiguity and doubt, to justify the employment of force to restrain them.

It appears to me, that those who refused their acquiescence to what had been determined by a majority of the house of commons, had no right to support the election of Mr. Wilkes, merely upon the point of his being chosen by a majority of the freeholders of Middlesex. But of this
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enough. The attempts of the faction upon this part of the constitution, were baffled by the firmness of his majesty; and thus we see, that the refusal of a Scotch minister to bribe John Wilkes to write for him in the news-papers, and vote for him in the House of commons, produced the most extraordinary revolutions in the cabinet, and a violent attempt by the people upon the guardians of their own liberties. Neither of these produced any favourable effect to the cause of faction; for the last was entirely defeated; and in all the changes of men in the different administrations that have been successively in power since the peace, not one has ever continued a popular minister, or held the same maxims in place, which he maintained to get into place. Indeed it is impossible that any man should; because to govern upon the maxims of our present set of patriots, is no less chimerical on the one side, than lord Bute's Utopian system on the other.

During all the tumult and uproar of these transactions, the nation in general flourished, and its commerce was extended, notwithstanding that the sectaries of faction were daily thundering ruin in our ears.

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They did indeed attempt to verify this prediction in one instance, for which I hope God will pardon them; though I doubt much if any friend to the prosperity of Britain can. It will be easily seen, that I have in view our disputes with the colonies. Whatever was the origin of those disputes, whoever was in the right or the wrong at bottom, I do not pretend to enquire; but I will be bold to affirm, that if any native of this island took an active part in widening the breach, in fomenting the difference, in advising or encouraging the inhabitants of the colonies to throw off their connection with, and dependance upon, the mother country, there is not a death so cruel or ignominious, which such a man has not deserved. I know two particulars to whom this charge might be brought directly home; and a third, whom it touches also very nearly. He is indeed a native of America, and therefore in one sense is less criminal than the others; but in another he is more culpable; for the unmerited favours he has received in this country, ought, at least, to have taught him gratitude.

It would be amusing to a speculative mind to examine all the whimsical systems
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of reformation, which were set up at this time. Most of them, indeed, more objects of contempt and laughter than resentment, had not all of them indicated a spirit destructive of the principles of the constitution. Such, for instance, was the society which *modestly* intitled itself, *The Society of the Supporters of the Bill of Rights*. The worthy gentlemen that composed it had their regular meetings, their chairman, their secretary ; in short, the whole apparatus of an established constitutional assembly. Their proceedings were such as might be expected from ignorance and madness ; but though they were very angry themselves, they never could excite in the public any thing but laughter.

Such also became the common-council of the city of London.—Neglecting the business of the city, it endeavoured to erect itself into a council of state. A number of wise and prudent citizens were either driven out, or ashamed to remain in it ; and their places were supplied by a parcel of political quacks, strangers to the city and its interests, strangers to moderation, to knowledge, to justice, or humanity. These men voted in Guildhall against the resolutions taken in St. Stephen's Chapel ;

and in their incoherent discourses, treated the king, lords, and commons, as very much their inferiors. But with all their profound political wisdom, they did not perceive that they were become the tools of a discarded statesman; if that appellation belongs to a man, who was hoisted into short-lived place and power, by the jumble of the times; and who had established an universal character of undeviating perfidy and deceit, at a time of life when most men have no character at all.

I might also mention here the strange doctrines of reformation that were inculcated on the publick, by private politicians of both sexes. For instance; the deep laid scheme of enslaving this country by means of a *double cabinet*, discovered by an Irish patriotic reformer; and his no less sagacious and well conceived remedy against this impending evil, viz. by establishing a cabal or junto of great men, of particular families, to govern this kingdom. To this also refers the plan of a female legislator, of a representation by a *circulating round of rotation*. But peace to the manes of all such. It does not belong to me to do justice to the wisdom and penetration of these lucubrations, and many others,

others, equally profound and able. The only objection to every one of the proposed reformatations was, that they agreed in no one point, save in opposition to the established constitution; and if they could have been supposed to succeed in overturning *that*, there might have been some difficulty in the choice of another, amongst so many pregnant with obvious advantages; and none yielding to the other in solid improvement, and patriotic zeal, in its particular supporters.

I speak of these things ludicrously, because they were ludicrous in themselves. But with respect to their consequences, the case is very different. The people, in the midst of so many jarring and contradictory notions, lost all sight of the principles of the constitution, as I have already said. Some began to entertain levelling principles, and to shake off that respect of opinion, without which no government can subsist. On the other hand, the patriots, encouraged by having frightened two or three timid pilots from the helm, and exasperated that none of the changes had brought any advantage to their party, did not give up the game; but being baffled in their attempts upon the *executive* and

legislative part of the constitution, they turned their arms against the *judicative*; and if they succeed in this, it will have been in vain, that their inroads upon the other branches have been repulsed.

I am one of those, who think that this case is more alarming than all that has hitherto happened. The veneration due to the laws, and the administration of public justice, at the same time that it is the strongest bond of society, that which connects its parts most intimately together, is also the most easily dissolved; and, in a government like ours, being once dissolved, the whole fabrick tumbles upon our heads. It is the leading principle of the constitution, and it depends solely and singly upon opinion. It has neither the active arm and force of the executive branch, nor the territorial and pecuniary authority of the legislative; and such is its purity and dignity, that it cannot descend to defend itself, even when the principle to which it owes its existence is attacked. It is therefore helpless in every sense of the word; and it must cease to exist, in the very instant that the people withdraw from it their voluntary submission.

The assistance it can draw from the other
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powers is proper to enforce the execution of its decrees ; but cannot produce that primary confidence, without which these decrees pass for the dictates and operations of force, and not the determinations of law.

Therefore, whenever the tribunals of public justice are affected by the recoil of political disputes, an eminent danger arises, not only to the particular form of government which may prevail in the state, where such dispute happens, but also to the very essence and being of society. If the laws and the courts of justice fall into contempt, all is at an end ; and therefore those who, from political considerations, endeavour to weaken that confidence which the people have in them, ought to be very certain of the grounds they go upon. I admit that cases may be figured, and perhaps have even happened in this kingdom, where an attention to the proceedings of courts of justice has been necessary for the preservation of the constitution. When judges were dependant on the crown, when the crown was enterprising and ambitious, and when the principles of political liberty were little understood, such things may have been ; but at present I think it is impossible they can happen. That in
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fact they have not happened, I shall now proceed to prove ; and I flatter myself I shall do it to the satisfaction of every man, who either can, or will give himself the trouble of attending to the argument.

And to begin. I take upon me to assert, without hazard of contradiction, that at no period of our history was the crown so little disposed to encroach on the rights of the people. Since the accession of his majesty, there has not been the slightest attempt to extend the prerogative of the crown. The only circumstance that could even be wrested to an appearance of it, was what happened to John Wilkes, in relation to the Essay on Woman. It seemed, indeed, as if an unfair advantage had been attempted to be made of general warrants in that case ; for the spirit of our law rejects the idea of bringing even the most abandoned criminals to punishment by inquisitorial means. Yet when that matter is fairly considered *in itself*, much of the impropriety of it flies off ; and when it is considered in *its consequences*, it will be found to prove the existence and vigour of that constitutional liberty which it appeared to invade.

In *itself*, the method of discovering public

lic crimes by the means of general search warrants, granted by the secretaries of state, had been the practice at all times since the Revolution, as well as before. Therefore, though it cannot be vindicated upon principles of the constitution, yet it was highly excusable upon the import of that maxim in law, which says *communis error facit jus*. It was no new encroachment on the part of the crown; but a continuation of an ancient unconstitutional practice, never formally authenticated, nor reprobated.

As to its *consequences*, they were such as the most zealous friends of liberty could have wished. So far from supporting general-warrants, though authorized by practice, the courts of justice met the wishes of the people more than half way; and declared them illegal, and unconstitutional. And with respect to the particular injustice done to Mr. Wilkes, by the exercise of a general-warrant, it was amply recompensed in a manner the most necessary and agreeable to him, and to the spirit of the laws, viz. by pecuniary damages.

Now, I would ask the warmest sticklers for public liberty; if it can consist in any thing save what happened on this

occasion? It is impossible, in the nature of things, but that men will err and deceive themselves as to the extent of their power; and that government can only be pronounced FREE, in which the errors of those who administer it, can be rectified by an immediate interposition of the *judicial* powers; and the particular injury repaired, without any violent exertion of the *executive*, either to prevent, retard, or forward the course of public justice. I say, to *forward* the course of public justice, because no man is so ignorant of politics as not to know, that the interposition of the crown to controul the courts of justice, would be no less dangerous, if exerted to force a point otherwise constitutional, than if exerted to prevent, or retard its determination. And therefore the patriots were acting in diametrical opposition to their own principles, (supposing them to have any principle of the constitution) when they worried the king with petitions and remonstrances to dissolve the parliament. For if the executive, legislative, and judicial powers of the constitution, are not totally independent of each other, the ballance is lost, and one scale kicks the beam.

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The people therefore, had all the reason in the world to be satisfied with the issue of the question relating to general-warrants. It afforded a proof demonstrative of the vigour, and nerve inherent in the constitution.

But those who are accustomed to reason with any degree of precision, and who understand the true meaning of terms, will easily perceive that I do not mean to vindicate all the measures of government, in the conduct of national affairs. Many errors have no doubt been committed by particular ministers; and the general interest of the nation, perhaps, in particular cases, may not have been sufficiently attended to. In the detail also of government I do not pretend to say, that his majesty's ministers have always acted as they ought. So many sets have been in power, and each set taking an opposite line of politics from that which preceded, it is impossible that they all could be right. If they had acted all of them upon the clearest principles of human policy, the event would have often deceived their expectations — The best human policy is but a fallable science, and when we add to it's fallability the different passions, and interests which blind and bias

even those who knew it the best, and pursue it the most steadily; it ought to make all who are liable to the same passions and errors, cautious how they censure the conduct of others. The rather, when we look back on the history of other ages, we see the same errors and imperfections; perhaps greater, and yet the affairs of the world going on pretty nearly in their natural order.

It would seem, that as nature, or providence has not made the health of individuals to depend on the skill of physicians; so neither has she calculated the prosperity of states, in a proportion to the abilities of statesmen. Because were the thousand part of the blunders, attributed to the ministry by the patriots, true, we should at this moment be in an abject, and ruined state. I mean ruined from debility, languor, and inanition. We are indeed on the brink of ruin from an opposite cause; a plethoric habit, pampered pride, luxury, discontent, and insolence, the concomitants of an overgrown prosperity. The athletic habit is as dangerous as the consumptive: a fever kills, as well as a marasmus; and if it leaves the life, brings on a marasmus, which I fear will be our fate.

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I have asserted, that the affair of general-warrants was the only measure apparently unconstitutional, that has been attempted under his majesty's government. Upon recollection I correct myself; there was another; an attempt to revive the dispensing power of the crown, in a question relating to the exportation of corn. The authors of this were lord Chatham, and lord Camden, the flaming patriots of to-day; and the person who prevented it was lord Mansfield, the person obnoxious to the patriots of to-day. If the matter had not been publicly discussed, I should not expect to be believed in what I say. What! have the people of England forgot, that this very question was the great leading point to the Revolution, the very hinge on which it turned? Can they be so blind to bestow their confidence upon, or throw their ingense before men who made an attempt to revive that odious, that unconstitutional doctrine? Can they carry injustice, and ingratitude so far to refuse their approbation; to load with reproaches the very man who stood forth the defender of the constitution and their liberties? It is impossible, I will not believe that there can exist in a hu-

a human mind, notions so contradictory, so depraved, and so weak. But, if such a thing were possible, the saying would be true, *that the people of England believe nothing they see, and every thing they hear.*

The mention of this great, and much injured man, lord Mansfield, recalls me to the particular subject, which induced me to trouble the public on this occasion. I will not make his eulogium; it will be better made by posterity: when his wisdom, his integrity, his unremitting zeal for the public good, his consistency, and steadiness of conduct, will receive that retribution which his cotemporaries, to their lasting disgrace, seem desirous to withhold from him. Death only can close the mouth of envy, and time alone withdraw the veil which prejudice, and passion, and designing art have placed between him, and the deluded multitude: his example will prove, either that the age in which he lived, was a bad appretiator of merit; or that there is a natural warp and bias in men's minds, which leads them to run after a specious shadow, and desert and despise the real substance.

But my lord Mansfield not only prevented the dangerous injury offered to the
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constitution, by the earl of Chatham, and lord Camden; he was also either a first mover, or a strenuous, and zealous promoter of the popular laws, which have been made during the present reign; and by which the constitution has been brought nearer the standard of perfection, than by all the other improvements since the æra of the Revolution. I mean that law by which the judges were rendered independent of the crown, and which proceeded from his majesty *ex mero motu*. That by which the minds of the people were quieted, against the apprehension of the crown's right, commonly called the *nullum tempus* act.. That which, by restraining the privilege of parliament, was of such essential advantage to the internal commerce of the nation; especially to that part of it which could least afford to lie under any disadvantage, the honest and industrious shopkeeper, and handicraft. And that law, by which questions of election, in the house of commons are henceforth to be tried, in a manner which will prevent the injustice pretended to have been done in the Middlesex election; and guard against the bad consequences, which it was figured might follow from that determination.

Three of these most salutary and beneficial laws, were made by the present parliament, which is endeavoured to be rendered so obnoxious to the people ; and two of them, the privilege and election bills, could not have gone through the house of peers, had it not been for the zeal, the wisdom, and eloquence of lord Mansfield. There have been times, when smaller services to the nation would have raised altars and statues to him who performed them ; but such is the phrenzy of the present times, that a deluded multitude are taught to believe, that the men who attempted to destroy their liberties, are the zealous assertors and defenders of them ; while the man who stood forth, and in the face of the world opposed and defeated the attempt to destroy them ; and on every occasion has given a public testimony of his zeal, not only to preserve, but to extend and enlarge the basis of public liberty, is represented as her enemy.—Once more I affirm, *that the people of England believe every thing they hear, and nothing that they see.*

Unless this were true, it could not have happened, but that, in return for so many beneficial laws, the bulk of the nation would have been pleased to see any offen-

der against the dignity of the crown, the person and character of the king, or the public peace of the realm, brought to that same justice, which had been so fully administered to Mr. Wilkes against the crown, when the rights of the people appeared to be in question. Reasoning consistently, and with a view to the constitution, the principle seems to hold equally in both cases; for he who would permit every thing with impunity on the side of the people, neither understands, nor is a friend to the liberties of the people. Besides, in the principles of commutative justice, were the king supposed no *more respectable* than another man, (which is not the language of the constitution) he surely is no *less respectable*; and, one would think, he had a right to the same legal redress of an injury offered to his person or character, that the meanest of his subjects enjoys.

Setting out on this principle, which I think will hardly be contradicted, I am at a loss to discover upon what grounds any person of common sense, or common justice, could take offence on account of a prosecution carried on by his majesty's servants, against the printers and publishers of the Letter signed Junius. Whether

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that Letter was a libel or no, is not the question in this part of the argument; Mr. Robert Morris says it was not; I say it was; and if his majesty's servants were of my opinion, they certainly had a right to try at least to punish the offence. The question, libel, or not libel? will always remain a matter of opinion, because its definition is only referable to another proposition, viz. whatever tends to the injury or ignominy of a person's character. Those who think, therefore, that the Letter signed Junius, traduced the king in his political and natural character, will think it a libel, and so *e contra*: I am only surprized that Mr. Morris, who is so apt to take fire at a reflection upon his own character, should be amongst the number of those who think the Letter signed Junius no libel.

If it were permitted to every man to write, print, and publish whatever he pleased of another, there would be no room for this question. But even the patriots would object to this, for they would suffer perhaps more than others. Therefore they admit the doctrine of libels; but they restrain it to what may be published against themselves, excluding what they may think proper to publish against others. It is a misfor-

misfortune, however, that the law has not authorized this patriotic distinction, but in general has made a crime of printing and publishing, what is injurious to the character of an individual, as tending to a breach of the public peace.

Under this prescription of the law, several prosecutions were commenced against printers, and re-printers of the Letter signed Junius; for, thank God, the merit of that celebrated piece was not confined to a single publication. The question came to trial *per pais*, I believe in all these prosecutions. Some of the jury's thinking upon this head, with Mr. Robert Morris; and exercising a power which is given to juries by the constitution, (and which neither lord Mansfield, nor any one else has attempted to infringe, as shall be sufficiently proved) *acquitted the defendants*; and there the matter rested as to them. Another jury thinking with me, and many others, found a defendant *guilty* generally; and a fourth jury returned a verdict, finding the defendant *guilty of printing and publishing only*. The person found *guilty* generally was Almon; and he found *found guilty of printing and publishing only*, was Woodfall.

From the cases of these two persons, pretext has been taken by our worthy patriots, to censure and arraign the proceedings of the courts of justice; as if some violent injury had been done, not only to these two obscure individuals, but also to the public liberty, and the subject's right of trial by jury; justly esteemed the bulwark of the liberty of the subject. Before the court of king's-bench had given a judgment, or formed an opinion, upon either the one verdict or the other, an ex-chancellor of England, an envious emulator of the chief justice of the king's-bench, took the opportunity of a long vacation, *having nothing else to do*, to write a ponderous volume, to bias the minds of the people, and prepare them to receive with discontent the judgment of the court, whatever it should be. Labouring in the chaos of hypothetical principles; falsely stating facts, and disguising truths; confounding distinct things, and distinguishing without difference; concluding without premises, and premising without conclusion; deducing consequences and corollaries, to contradict the propositions on which they are founded; substituting a pitiful sneer, and a scan-

a scandalous insinuation, in the place of an argument; and from one end to the other, perverting every idea of common sense or reason, seems to have been the object and end of the Letter on Libels, and the Postscripts which have been, from time to time, tagged to it; just as the author's virulence and animosity furnished him with matter to lengthen out his cobweb of sophistry.

To enter into, and confute, every false maxim which this heavy work contains, would require as much room as the work itself; for it is from beginning to end a tissue of disgusting falsehood and absurdity. This would also be the most useless, and the vainest labour; for there is not a word in it, from beginning to end, that has any relation to the matter in dispute. But the great art of the performance lies singly in this, that it does not relate to the matter in dispute. There is unfortunately a petty-fogging ingenuity, natural to some men, and which a certain sort of practice in the law never fails to improve, by which those who possess it, can play round the question in agitation, through the course of a long argument, or a longer pamphlet, without ever touching or receding so far from it, that common understandings will perceive they

they are going upon another question. This pitiful knack has acquired great reputation to more than one I could mention at the bar, and if we may judge from the Letters upon Libels, and those signed Phileutherus Anglicanus, in the Public Advertiser, the author of them seems to have acquired all his reputation by his skill in it.

Nothing so easily deceives people, who are not accustomed to distinguish logical truth from falsehood; but to men of clear and sound understandings, these idols of the gaping mob are infinitely more contemptible than people of the plainest and most common apprehensions. The sophistry of an haranguer's argument casts no mist before the eye of true reason and judgment; but there is some art required to strip it of its false glare, and make it appear, as it really is, a phantom and an illusion. That art does not consist in following it step by step; for it is an ignis fatuus that will lead you into quagmires and over precipices. The true and only method is, to keep clearly and steadily to the precise terms of the question; and not to recede a line from logical truth and demonstrable deduction; whatever plausible shape the sophism may take, to despise

spite and neglect it; and (to apply to the subject the ancient allegories concerning virtue and pleasure) to keep onward to a direct conclusion, in spite of all the delusions which it may throw in your way, to tempt you from the path of fair and steady argumentation.

In this manner do I propose to treat the author of the Letter upon Libels, and all his sequel. Instead of discanting through sixty long laborious pages upon the cases of *The King and Bear*, I shall simply and plainly state the controverted opinion given by the Court of King's Bench, in the cases of Woodfall and Almon; and I have not the least doubt, but that every man, whose degree of understanding enables him to judge, and whose passions and prejudices does not prevent him from judging aright, will be demonstrably satisfied, that lord Mansfield's opinion, in both the cases, is strictly consonant to reason, to justice, and the law of the land.

I must premise, that the patriots in this question, as in all others which they have brought to the bar of the public, employ means and reasons, which, were they even to produce a good end, could not be justified by it. There is a maxim of morality and of sound policy,

policy, that no man ought to do evil, that good may ensue ; and of all men, those who take upon them the respectable name of patriots, ought to have this maxim perpetually before their eyes. He, whose views for the public good are upright and sincere, who is not biaſſed by party or private interest, will pursue the public good by open and upright means. If he cannot accomplish it by such, he never will employ others ; because he must know, that by employing despicable subterfuge, and the left-handed wisdom of cunning, he does a greater mischief, than that which he studies to prevent.

There are three things which our patriots have done, that evidently demonstrate how widely their notions differ from those of a real patriot. The first is, the methods by which they raised this matter into a question of public concern. Before they knew what determination the court would give, either in the case of Woodfall or Almon, they crowded the news papers with insinuations to prejudice the public against the judgment, whatever it might be. They wrote prodigious pamphlets, making strange hypotheses to alarm the ignorant, and persuade them that no justice

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was to be expected. Their hopes, however, were in a great measure disappointed by the determination in Woodfall's case, which was indeed, from its circumstances, the most important. But they had an after-game to play. A desperate incendiary made a motion in the House of Commons for an inquiry into the proceedings of the courts of justice; not grounded upon any precise charge, or against any particular person, but upon distant hints and dark surmise, that reports and rumours, prejudicial to the course of public justice, had gone abroad among the people. And what were these rumours? No other than the news-paper essays, and bulky pamphlets, which they themselves had published; so that they made the cry they had raised themselves, and in which they were *not* followed by the nation, a pretext to raise a greater. By this method any two or three news-paper writers have it always in their power to make a parliamentary enquiry necessary, however absurd, however unconstitutional, provided they can find a member of parliament abandoned enough to move for it, on the ground of report and rumour.

So much for the manner of bringing this question into public notice. The second

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piece of injustice was in making it a question at all. There is nothing so dangerous, in a well regulated state, as that of raising matters, indifferent in themselves, or trifling in their consequences, into important and constitutional questions. And the most dangerous pests of society, are the men, who, either from a perverse understanding, or a depraved heart, lay hold of such things to sour the sweet milk of concord, and turn the bent of the people against the government under which they live. That there is in the mind of man a corner of folly and ignorance, which by intensely contemplating a mole-hill, turns it into a mountain, is proved by the history of all ages and nations. The deluges of blood which have been shed in the metaphysical disputes of religion, and of the futility of which all the world is now convinced, will remain to the end of the world a melancholy testimony of this truth. We are apt to call the ages in which these things happened, ages of ignorance; and our own we dignify with the appellation of enlightened. In this we err on both sides of the proposition, by taking in a general sense, as usual, what is true in a particular sense only. In those days the
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arts of life, and the true principles of solid science were indeed unknown. But in metaphysical science, in dialectic, and the other scholastic jargon, their knowledge and ingenuity were stupendous. Now it happened that they did not cut one another's throats about what they did not know, but about that which they knew too well. We are convinced of their egregious folly, because we are convinced that it was a matter of perfect indifference whether a man was on the one side or the other in the questions which set them together by the ears. But are we sure, that while we contemplate our ancestors with a mixture of pity and contempt, we are not ourselves guilty of equal absurdity and folly, though directed to another object? I have already hinted, that politics is the religion of this island; and into our political disputes we introduce the same enthusiasm, rancour, animosity, obstinacy, want of candour, and ignorance, which our forefathers did in their religious quarrels.

I hope I shall be understood as I speak; I compare our present political disputes, to the metaphysical disputes about religion; but I compare the Reformation of the church, to our Revolution in the state. Both the first nonsensical and nugatory in

themselves, and fatal in their consequences; both the last proceeding upon true principles of religious and civil liberty, and most salutary in their consequences. Yet, after the Reformation in the church, a thousand sects started up, who, not satisfied with it, were for reforming further; and God knows how strange the ideas of some of these new reformers were. Time and reason have annihilated the greatest part of them, but have not yet obliterated their memory; and I appeal to the reading of every man of reading, whither it be possible to conceive any thing more monstrous, than many of their opinions. They too occasioned much bloodshed; and to them I compare our present set of patriots. Not satisfied with the constitution, as established at the Revolution, and improved by many salutary laws since that period, they are every day insisting upon new, ideal, and absurd amendments, without any regard to the analogy and agreement of these with the general plan; without any consistency amongst themselves, but divided into as many sects and opinions as our religious zealots formerly were. If it were possible to indulge them all in the gratification of their wishes, they would find themselves in

in the situation of a boy, who runs across the field to catch a rainbow, and cries when he finds he has followed an illusion.

Therefore, in as much as the spirit of inquiry and reformation is praise-worthy, and to be encouraged when directed to salutary and substantial ends, by the dictates of wisdom and sound understanding; in so much it is pernicious and to be discouraged, when it raises alarms upon points that are unessential and trifling. When it proceeds from the spirit of party and prejudice, and is conducted by men, who, besides having other views than the public advantage, are incapable to perceive wherein that advantage truly consists, and to pursue it by the measures through which only it can be attained. That the question relating to the proceedings of courts of justice, is of this trivial and unimportant nature, I think is a demonstrable proposition. What is it to the public? how does it affect the constitution, were it even admitted as true, that a judge at Nisi Prius, had given a wrong direction to a jury; if he had told them, *this you are to judge of, and that you are not to judge of?* Is there any man deceived or injured by this direction? does not every jury know, that they may follow the judge's direction

rection, or not, as they please? That the greatest men will err in their opinions, we all know; and there is hardly a point in the law, upon which contradictory judgments have not been given at one time or another. If in every case of this kind a parliamentary inquiry is to be set on foot, the parliament will have nothing else to do. If in every case of this kind, the courts of justice are to be arraigned at the bar of the public, and the people stimulated to discontent, sedition, and revolt, it were better to put an end to judicial proceedings altogether; and allow every individual to assert his rights by the strength of his arm.

Again: had any individual been oppressed, even by an error of a judge in such circumstances, it is a thing which must every day happen, while judges are no more than men. But what is the question here? The judgment of the Court of King's Bench in Woodfall's case, was favourable to him; it amounted in its consequences to an acquittal; for though it directed a new trial, yet it was well known such trial could never take place; and if it had, after all that has been written and said upon the matter, there is not the least fear that any jury would have left the question in a state of doubt or

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uncertainty, so as to give room for the interposition of the court.

But the patriots finding it difficult to arraign the judgment, strain their endeavours to decry the grounds upon which it proceeded. They pretend to see in the argument many dreadful spectres ready to devour the mode of trial by jury, that great bulwark of English liberty. It is however frivolous and captious to dispute the *premises*, when the *conclusion* is proper. A decision may be of importance to the law; but the arguments of a judge, leading to that decision, are of none. They may be true, or they may be false; it is the judgment that makes the precedent, and not the reasons of the judgment. For we should have strange work, if every judge were obliged to justify in parliament every position which he uttered in delivering his opinion in a court of justice.

Not that I believe Lord Mansfield would find it difficult to justify, upon the clearest grounds of law, every position laid down by him in Woodfall's and Almon's cases. I am so far from thinking so, that I shall very speedily give my reasons for concurring with him. But I must first mention a third and most material injustice, which our patriots,

triot, in the present case, have done that great man. By a candid and fair discussion of his opinion, they knew very well that no advantage to them could be expected. They knew, that when the point is understood, it resolves into what men of science call a *logomachia*, a mere dispute of words; and therefore they have forced upon him, by strange inference and construction, an opinion which he never held; and the reverse of which is as clearly expressed in the argument in Woodfall's case, as words can express it.

The patriots affirm, that my Lord Mansfield's direction to the jury in Woodfall's case, and the opinion delivered by him as the unanimous judgment of the Court of King's Bench, tend to abridge the power of juries, by taking from them the right of returning a general verdict upon every general issue. I, on the other hand, maintain, that the question relates in no shape to this power of juries; and the contrary proposition is inculcated in almost every sentence of the controverted opinion. I am perhaps a better friend to the constitutional mode of trial by jury, than most of our worthy patriots. No consideration of party or private interest could induce me to defend, or
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favour any attack on that sacred right of an Englishman. But upon the same principles of regard for it, I would not pretend an attack where none was made. It is always dangerous to *commit* or bring into question a valuable privilege upon slight grounds; and to bring it into question by pretending it is attacked, when in fact it is not so, is the height of political madness, or of political wickedness. I leave to the candid to determine, whether the patriots are moved by the one or the other; or whether they be not a mixture of both, in the present instance.

Yet, however zealous I am for the mode of trial by jury, I would not wish to see it extended beyond the bounds of its institution. The abuse of the best things make them degenerate into the worst: and this is one of those things in which there can be no medium; therefore no well-wisher to the constitution can desire to see the power of juries, (or any other constitutional power indeed,) go beyond the letter of it. Some of our patriots have declaimed very eloquently against discretionary powers in judges. Whether they had any reason for doing so is not here the question; but the argument, I am certain, will apply with tenfold force to the case of ju-

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ries. Because if they assume a discretionary power in all cases, or indeed if they exercise the power, which the constitution gives them, wantonly, and without the controul of law, or respectable opinion, what will be the consequences? No other than these, that in every political dispute, the leaders of a popular party may proscribe every man who stands in the way of their ambition. This would be an easy and speedy method of getting into power; but as there is no chance that any minister can preserve his popularity while in power, he would be proscribed in his turn, and thus we should see the Roman age of Marius and Sylla revived, with all the horrors that attended it. Innocence would be no protection, merit and wisdom no defence; the more conspicuous the man, the less would be his chance to escape; and the popular rage, from every act of injustice and cruelty, would be whetted to seek a fresh victim.

I am bold to affirm, that it is much more dangerous to admit a discretionary power in juries, than if it were exercised by the judges in their judicial proceedings. And the reason is this. Judges are created by the crown; and though independent of the crown, by a most patriotic law of his present

present Majesty, yet the people regard them still with some degree of jealousy. They are ever under the eye of a watchful and discerning public, which never fails to keep them on their guard; and, if at any time they chance to slip, brings them back to their duty. This is entirely as it should be, while the public continues in the character of an impartial and discerning monitor; but when it is heated by party and prejudice, that which was before a wholesome severity, a constitutional check, becomes a wanton and arbitrary humour and caprice. The public from an Aristarchus, degenerates into a Zoilus; and instead of promoting the ends of justice, and watching over the constitution, it defeats both.

On the other hand, juries are far from being objects of the people's jealousy; chosen from amongst themselves, and sanctified by practice coeval with the land, (if I may so speak) they are cherished by the people with a fond idolatry. Whatever injustices they may do, whatever incroachments make, so far from being checked by the voice of the people, it is most certain that the voice of the people would be raised against any one, who should attempt

to redress the wrong. The mischief (should any spring from the injustice of juries) would be too prevalent, before the nation in general perceived it; and perhaps too late for a remedy, unless by abolishing the institution altogether, which would be a remedy little better than the disease.

Therefore every lover of the constitution must wish to keep juries, as well as judges, within the established rules of the constitution. It is extremely natural for men to take fire upon slight or insult offered to those they dearly love; and the patriots laying hold of this principle, endeavour to raise a flame by pretending that the right of juries has been impeached, because they know that the trial by jury is dear to the public. But a wise and enlightened public will not take it for granted, that juries have been insulted, merely upon the authority of a parcel of incendiaries, who have an evident interest to deceive it. Neither will the public understand or resent a construed and implied insult in a conclusion dragged (as it were) through a chain of uncertain and problematical premisses. No; to rouse that resentment which every honest man would feel, were the trial by jury in any real danger of infringement, that danger

ger must be palpable and obvious; otherwise we should run the risque of falling into the very inconvenience which we are so anxious to shun. For there is nothing more certain, than that many valuable privileges have been lost, not only by abusing them, but by an over-solicitude for their preservation, and a womanish terror of every thing that seemed to approach them.

Is the mode of trial by jury of such a tender, delicate, and flimsy texture, that the breath of a judge can discompose its frame? God forbid! I understand it to be vigorous, sound, robust, and capable of resisting much more violent assaults. Of this all the instances given by the patriots, to prove the incroachments upon juries by unconstitutional judges, in unconstitutional times, are invincible evidence. The opinions have past away, and the trial by jury has not only remained firm and entire, but has received much improvement and perfection. From thence I conclude, that the fears of incroachment upon it at present are affected or vain.

But as I believe and hope, that no judge would succeed in an attempt to abridge the constitutional power of juries; so I am
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firmly convinced, that no judge now on the bench, ever entertained an idea of that kind, and of all the judges, lord Mansfield the least. With that penetrating judgment, and comprehensive knowledge, which all men confess him to possess; is it possible to believe that he is ignorant of what the history of all ages, and every day's experience, forces upon the dullest and most unenlightened minds? The charge of the patriots against him is inconsistent to an absurdity. They call him timid and irresolute, and yet they accuse him of attempting a thing, which could only be conceived in the brain of such a madman as lord Chatham. But with all his wisdom and consummate abilities, I am far from thinking (with the public,) that lord Mansfield is a politician. That he is profoundly skilled in the law; that he is a thorough master of the science of politics, as relating to the true interests of his country; that his notions of the constitution are pure and comprehensive, I admit: but I know a little swarthy fellow, who would outweigh a thousand of him in the scale of modern politics. Lord Mansfield cannot be silent, when his duty calls upon him to speak; nor betray the trust of his office to those

those, who will make a bad use of the confidence. When a question occurs, wherein he must give his opinion, as a judge, he does not consider which is the popular side, but decides according to the law of the land. He never sold himself, soul and body to a tyrant, nor was used, like a spaniel, to fetch and carry. From his first setting out in life he relied entirely upon his parts and integrity for advancement; and he never was attached to a party, nor engaged in a dirty job, not even in a single election. When in the house of commons; he supported administration when in the right, and opposed it when he thought the measure was wrong. In his profession as an advocate, he was equalled by none; and perhaps never will be equalled in abilities, integrity, and honour. Advanced to the seat of justice, and to the peerage, his conduct has been uniformly the same, firm, steady, and consistent. On the bench, his great object has been to rescue the innocent and oppressed from the fangs of those harpies, who are a disgrace to the profession of the law; and his success in that noble attempt, while it has endeared him to all good men, has opened the mouths of the bad against him. In the

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house of peers, he has ever strenuously stood up as a member of legislation for the preservation of our constitution. I have already instanced several signal services which he has done the nation; and I could add more, but those may suffice; and were I to mention a thousand, the praise of them all would be wiped away by this consideration, that he was born North of the Tweed; and cannot stoop to flatter the delusion of the people.

Whatever he be, let us examine his doctrine. In so far as I am able to understand the law from the books, the provinces of a judge and a jurymen, are distinct and separate. The business of the one is to define and pronounce what the law prescribes upon a supposed matter of fact; and the business of the other is to ascertain that fact as true or false. Both of them exercise their rights under the sanction of an oath. The judge, when he enters upon his office, takes a solemn oath to administer justice *according to law*; and the jury, in every particular case, take an oath *well and truly to try the issue, according to the evidence*.

From the nature of the thing, therefore, their provinces are distinct and separate.

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The one strictly confined to the law; and the other no less strictly confined to the fact. And this distinction is expressed in that ancient axiom, *ad questionem JURIS respondent judices; ad questionem FACTI respondent juratores*. To establish this by authorities from the books, would be endless and superfluous. It is either plainly stated, or taken for granted as an undeniable maxim of law in every case, ancient or modern, and in every systematical treatise in which the question can occur. This general proposition therefore, I shall lay down as not to be contradicted.

From it flows the whole doctrine relating to the power of juries, whether in civil or criminal cases; whether in general or special verdicts. With civil cases this question has no concern; but I shall observe, that if the mode of proceeding were the same in criminal cases as in civil, the question could hardly occur: because in the latter the question of *law* (if there be one, distinct from the *fact*) is generally determined upon *demurrer*, before the question of fact goes to issue. But in criminal cases it is usual at least, if not necessary, to plead the general issue; and of course the question of *law*, where it is *distinct* from

the *fact*, cannot receive the determination of the court, till after the fact is ascertained by a *verdict*.

I have no occasion to enquire, whether, or in what cases a defendant may demur to an indictment or information? Because that would lead me away from the case in question, in which no such thing was attempted. Neither shall I examine whether a previous determination of the criminality of a charge, and the formality of the information or indictment in which it is made, would not be a more equitable mode of proceeding, than by first finding the fact, with its application to the defendant, and afterwards judging of its *legal import*, as well as the aptitude and *technical propriety* of the process. Because, though the former of these be perhaps more consonant to the natural progression of logical reason, and agreeable to the practice of most other nations, yet it is not our mode of proceeding; and we ought to argue upon the law and practice as it stands, not upon what it ought to be.

This being the case, those who contend, that in all criminal questions, where the general issue is pleaded, a jury ought to return a *general verdict*, without any regard
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to the direction of the judge *in matter of law*, entirely destroy the distinction between the *law* and the *fact*; and annihilate the judge's power, to determine the *law as arising from the fact*.

On the other hand, those who contend, that the judge has any power to controul the opinion of the jury *in matter of evidence*, or even by his direction in any case to force them to find, either *generally* or *specially*, against their judgment; or that a jury is subject to any punishment for finding contrary to the direction of the judge, would render the trial by jury of no use, but, as *lord Vaughan* says, "an unnecessary trouble and delay."

The knot of the present question lies in the apparent incompatibility of these two positions. For if it be true, that juries are only judges of the *fact*, as a distinct and separate thing from the *law*, it would follow, that they never can return a general verdict, unless when directed to do so by the judge. Whereas, it is certain, that in all cases, without distinction, if the jury *will* take upon themselves the determination of the *law*, wherever the general issue is pleaded, they may return a general *verdict*. That this is lord Mansfield's opinion, I

shall very soon make appear; and I believe his adversaries will be satisfied with his authority in this one instance.

To reconcile this seeming contradiction, it is only necessary to attend to the difference between the *power* of juries to find *generally in all cases*, and the *legal effect* of that power, *in particular cases*. The power is supereminent and uncontrollable in the jury; but its *legal effect* is subject to the revision of the court, *in all cases where the determination of the court can operate upon the question, as a clear question of law, without taking in, any consideration of fact, and thereby incroaching upon the exclusive rights of the jury.*

Therefore, as it must often happen, that the general issue in criminal causes is compounded of *law* and *fact* so complicated and blended together, that the consideration of the one cannot proceed without carrying the other along with it; in such a case, should the jury exercise their power of returning a general verdict, which were confessedly erroneous in point of law, the jurisdiction of the court could not operate upon it, so as to remedy the mistake in *law*; because, it being impossible to separate the *law* from the *fact*, the determination of the court

court could not, in its nature, be other than an encroachment upon the jury's province, by taking the fact into consideration.

But where the question of law is unembarrassed with *matter of fact*, and appears clear and distinct upon the face of the *record*, there, and there only, can the court interpose; not to controul the power of the jury; or to prevent them from finding a general verdict, if they chuse to do so: but to rectify the mistake of the jury, if they have erred in point of law, and to give the *verdict*, as applied to the charge, its *legal effect*. Whenever such case happens, that the precise terms of the law-question stand open upon the face of the record, the *issue* and the *verdict*, though *formally general*, yet *effectively* are only of *fact*; and the defendant will not be concluded in law by the general verdict of *guilty*, if, upon motion in arrest of judgment, the court shall be of opinion, that the *fact* tried is not criminal in itself, or does not amount in *law* to the precise crime charged in the indictment or information.

However excellent and conducive to the preservation of our liberties trials by jury may be, it would hardly be expedient, that

that every verdict of a jury were final and conclusive. Jealous as our ancestors were of this inestimable privilege, they did not chuse to give juries an uncontrollable power over their lives and properties. They appointed different punishments for different misdemeanours of juries, and for returning a false verdict, which is a misdemeanor in their *judicial* capacity, as distinguished from their *ministerial*, the punishment was by *attaint*; at least in civil cases. That method of punishing a jury for returning a false verdict is now obsolete; and since *Busshell's* case it is settled, that no jury can be fined or imprisoned for returning a verdict against evidence, or against the direction of the judge.

It is a necessary consequence of this legal indemnity of jurors in their judicial capacity, that they may return what verdict they please: because every power is unbounded, the exercise of which is not restrained by some sanction or punishment. But although it be right that juries ought to enjoy this unbounded liberty of determination, without fear of penal consequences, it does not follow, that what they do, should be *conclusive and irremediable*. On the contrary, expedients to redress the injustice

justice which they may commit, either by a wanton abuse, or an erroneous use of their unlimited power, ought to be encouraged, provided they are such as the constitution authorizes.

Of this kind, founded on the spirit of the constitution, and absolutely necessary for procuring material justice between man and man, are *motions for new trial*; which have been greatly protected and encouraged latterly. By these the errors and mistakes of one jury, are rectified by another, and the courts never fail to grant new trials, when it appears that a jury have misbehaved in their *ministerial* or *judicial* capacity. Of this nature also are *motions in arrest of judgment*, but which must proceed upon some ground of *form* or *substance appearing upon the face of the record*. By this a defendant may elude the effect of a verdict *guilty*, by moving matter sufficient in law, either against the *formality* of the charge, or the *criminality* of the fact charged. But the only evidence he can give to the court, is the record itself; and therefore, where the issue is complicated of law and of fact, and the clear legal question does not remain open on the face of the record, a defendant found *guilty against law*,
cannot

cannot move an arrest of judgment upon the *substance or merits*. The only remedy he has, is the judge's recommendation of him to his majesty, as a proper object of the royal clemency.

An example will serve to illustrate this distinction. *A* is indicted of *murder*, and pleads the general issue. The fact of *kill- ing* is proved, and the defendant brings evidence to prove circumstances of justification, alleviation, or excuse, which reduce the fact, charged as murder, to *justifiable homicide, manslaughter at large, or manslaughter in self-defence*. The judge directs the jury, either to find the precise crime as it turns out upon the evidence, or to return a *special verdict*, stating particularly the facts proved in support of the indictment, and in justification, &c. of the defendant. It is optional in the judge to do either, though in these cases the better course is to direct a special verdict; and an upright jury will generally return a special verdict. But if instead of this the jury should neglect the direction of the judge altogether, and return a general verdict *guilty*, this would be guilty of murder; for the verdict bears a direct and immediate relation to the indictment, and there exists no intermediate

evidence of record to qualify the co-relatives, *guilty* and *murder*.

Nor in this case can the defendant move an arrest of judgment; because his justification, &c. depended upon evidence, which the court cannot examine, nothing appearing to them to ground a determination upon but the record, viz. the indictment charging murder, and the verdict finding guilty. But supposing *a fact* is charged in the indictment as murder, which does not amount to the legal definition of that crime: the defendant pleads the general issue; the fact *as charged* is proved, and no evidence is offered for the defendant, and a verdict *guilty* is returned. There, I conceive, the defendant might move an arrest of judgment, to defeat the effect of the verdict; because the question of law, uncomplicated with fact, remains open upon the face of the record, and the judicial power of the court can operate upon the question, to determine whether the fact charged, of which the defendant is found guilty, amounts to the crime of murder, or to a crime of any kind.

This, in my humble opinion, is the true ground of distinction between general issues, complicated of *law and of fact*, and

general issues, which are merely *of fact*; and between cases where the question of law remains *open*, or *not open*, upon the face of the record. The application of this general doctrine to my lord Mansfield's opinion, will show how much he is belied by those who contend, that he means to abridge the power of juries. Indeed the very basis and groundwork of his argument is this power which it is pretended he would impeach. And from a fair construction of every position he has laid down, it appears, I think, demonstrably, that he meant no more than to direct the jury to keep precisely within the bounds of their province, in a case, where, if they had exceeded it, the jurisdiction of the court could not have been excluded by the verdict.

No man can deny, in Woodfall's case, that the question of law, libel, or no libel? was open upon the face of the record. The general issue was purely an issue of fact; for nothing was alledged in justification, alleviation, or excuse; no evidence whatever was offered for the defendant. The defence made for him by his counsel was merely *argumentative*, on these grounds, that the paper, charged as a libel, was not a libel, but innocent, and consequently
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did not deserve the epithets of false, scandalous, and malicious, given it by the information. Secondly, That the defender's intent in publishing it, did not deserve these epithets.

In his charge to the jury, lord Mansfield told them, " that, if they did not believe
" the evidence, as to the publication, or
" that the inuendoes, and applications, to
" matter and persons, made by the information, were not in their judgment the
" true meaning of the paper, they should
" acquit the defendant; but if they believed both, they should find him
" guilty."

By way of answer to the argumentative grounds of defence, offered by the defendant's counsel, his lordship said, to the first, " That whether the paper, meaning
" as alledged by the information, was a libel,
" was a question of law upon the face of the
" record; for, after conviction, a defendant
" may move in an arrest of judgment, if the
" paper is not a libel; and that the epithets
" in the information were formal inferences
" of law, from the printing and publishing." To the second ground he answered,
" That no proof of an express malicious intent, was ever required in any case, and in

“most cases was impossible to be given.
 “That if the defendant’s intent was inno-
 “cent, or justifiable, the proof of justifica-
 “tion or excuse lay upon him, and on failure
 “thereof the law implied a criminal intent.”

Whatever blind, inconsiderate prejudice and passion may do, I know not; but I think it would be hard, in sound reason and fair construction, to find an objection to this doctrine. Upon the first branch, a man to impeach the opinion must deny that the question, crime or no crime? is a question of law, but that it is a question of fact. It has been said, that every man can tell what is a libel, and what is not a libel, just as well as a judge. Many cases have been quoted, to prove that judges have permitted the question, libel or no libel? to be agitated by the counsel; and have themselves, in directing juries, enlarged upon it; and from thence an inference has been drawn, that these judges considered the question as the province of the jury to determine.

Most of those cases have been taken from the State Trials, which, when they make for the patriots, are authentic and undoubted authority; but when they make against them, are ill collected, loose, inaccurate,

curate, arbitrary and unconstitutional. Scroggs and Jefferys too are quoted in one sentence, and anathematized in another. Resemblances to them (as like as I to Hercules) are discovered, when they act partially and unjustly; but when their opinions support those of the patriots, they are set up as patterns above the reach of imitation. Holt, when he favours their purpose, is a great luminary of the law, and a zealous defender of the constitution; when he makes against them, he is the whig chief justice, trampling on the constitution, and perverting law and reason to wreak his patron's vengeance on an obscure libeller. Raymond is a fresh convert, and, like all fresh converts, his zeal hurries him on to injustice and all its concomitant evils. By this way of reasoning all authority is baffled and confounded. Should I cite my lord Coke, it would be retorted on me, that he too was a court sycophant, because he was at one time devoted to the court; and perhaps I should not be able to prove, that the opinion I rely upon was given when he was in opposition to the court. (For so, at the time of the question of jurisdiction between the King's Bench and Chancery, he certainly was.) I know, therefore,

therefore, but of one authority directly applicable to the present purpose, which *some of the law-patriots* will not controvert; or if they controvert the opinion, they will not surely attribute it to partial or sinister motives. The person I mean is lord chief justice Pratt, who not only held, that the question, libel or no libel? and the *intent* of publication, were questions of law, and determinable by the court; but also that the meaning of the paper, and the applications to matter and persons, was also a question of law, and not the province of the jury. To this purpose he gave a charge to a jury at Guildhall, in 1722, the King against Gallard: a note of the case, very accurately and judiciously taken, is amongst the papers of Mr. Filmer, then a practising counsel. Lord Raymond, it is true, rectified the error, as to the *meaning* of the paper in this charge of lord chief justice Pratt; *but he is a new convert*, and all who have followed him are tainted with some one vice or other, which I will not give the satyrists of our judges an opportunity of exposing.

I do not know whether even Littleton or Plowden could escape his censure, were I to tell him that they both clearly support the

the distinction I have made; and it is impossible to take the most cursory view of the books of Reports without finding the distinction either expressly laid down, or founded upon, in argument, as an established maxim.

And therefore it is evading the question to bring cases to prove, that judges have referred the whole matter, as well the law as the fact, to juries. It was never insinuated, that in all cases a judge may not do so. But the question is not, whether he may do so? but what effect his doing so would have? And whether he is bound to do so? It will not be said, I presume, that if the whole matter is referred to the jury by a judge, at *Nisi Prius*, that the defendant is concluded by the verdict, and cannot move in arrest of judgment upon the merits, if they are with him, and the question of law remains open. If that cannot be said, to what purpose should a judge refer the law to a jury, when their finding as to the law can have no effect, in the case put, where the question of law remains open upon the face of the record? In order to make the opinions and directions of *Scroggs*, *Jefferys*, and *Aylbone* authority in this case, it would

would have been necessary to state, whether the question of law was clear and unincumbered with fact, as in Woodfall's case; or whether any evidence was offered by the defendant in justification, alleviation, or excuse? which would alter the nature of the question entirely, and exclude the jurisdiction of the court; as the case could not be determined upon the record alone, without taking into consideration the evidence, which is not the province of the court.

How that matter stands I do not know. Paying little regard to the State Trials, I have not looked into the cases. If, as I suspect, evidence was offered for the defendant in every one of them, and of course the issue was complicated of law and of fact, they have no concern with this question. On the other hand, if all or any of them were similar to the present case, and that the question of law was open upon the face of the record, the indolence, (or by whatever name you chuse to call it,) of judges who neglected to inform the jury of their precise business, is no authority or precedent for others, who chuse to do their duty with more accuracy. No general direction, or general verdict,

will make that a crime, which is not in its nature a crime; and in all these cases, if the question of law was open upon the face of the record, the defendant might have moved in arrest of judgment, notwithstanding the general reference by the judge.

Frustra fit per plura quod fieri potest per pauciora; it is folly and a mockery of justice to do that by a circuit, which may be done directly: and it is a solecism to refer *ibat* to a jury, which, if they determine, can have no legal effect. But it is a much greater solecism to assert, that a judge goes beyond his duty, when he reserves for the consideration of the court, a point, which, the court would take into consideration, whether he reserved it or not.

It may be very true, that in many cases a juryman can tell what is a libel, as well as a judge. But it is also true, that a judge can tell whether a fact is proved, or not proved, as well as a juryman: yet no man, at least no lawyer, in his sober senses will from thence argue, that the judge has any thing to do with the matter of fact; though, if the argument be good on the one side, it must hold, *a pari*, on the other. In all cases

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cases, civil or criminal, men of good discernment, and a little study, are able to give a tolerable guess upon the merits of any question. But if every man in these circumstances should assume a *right* of judging, because he possessed the *faculty*, it would be just as if one should take a fancy to wear a blue garter, because he had a good leg. Judges and jurymen have their distinct provinces, accurately defined and bounded; and neither can encroach upon that of the other, though perhaps mutually qualified to exercise the duties of both.

If it be true then, that the question, crime, or no crime? libel, or not libel? (it matters not which) is a question of law, it must follow that the epithets of false, scandalous, malicious, &c. given to a libel in the indictment, or information, are also *formal inferences of law*, arising from the fact of publication. Whatever is of mere *form*, must be of an *accessory* nature, belonging to some *principal*, from which it is as inseparable, as, in logic, the *accident* is from the *substance*. Therefore, if the principal question be a question of *law*, the *formal inference* must be a question of *law* also. To separate them, and
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consider the one as a question of law, and the other as a question of fact, would create a most extraordinary jumble. Suppose the principal question a matter of *fact*, and the accessory of *law*, here would exist on the one hand that logical absurdity, a *substance* without *accident*; a lord-mayor in the abstract, without his chain, gown, custard, or plum-pudding: on the other hand, a still greater phænomenon would appear, viz. *accidents* without a *substance*; all the insignia of the office without a lord-mayor!—In this supposed case the jury might find no fact, and the judges a malicious intention without a criminal act to bottom it upon.

Or put the case, that the principal question were a question of law, and the accessory a question of fact, the same absurdities in law and in reason would follow. The jury might find, that a fact laid in an indictment or information deserved the *epithets*; and the judges, upon arrest of judgment might be of opinion, that the fact charged was not of a criminal nature, and so *e contra*. This reasoning depends upon the proof of the previous proposition; and I admit, that if the question, *crime or no crime?* be not a question of law; and when open upon the face of the record,

not the province of the court to determine, then the epithets are not *formal inferences of law*, arising from the fact of killing, publishing, or whatever other crime the case relates to.

And indeed I can see no difference between the law relating to libels, and that relating to other crimes: the proceedings in both are the same, and the same rules apply to both. Robert Morris, Esq. tells us, that an attack upon a man's character is the most cruel of all injuries; and if he be right, which I am inclined to believe, I do not see a good reason, why a libeller should have more favour shewn him, than the law has indulged to other criminals.

Yet, however unmanly and infamous the crime of libelling may be, it were unjust, and contrary to the spirit of our equitable laws, to lay a person accused of it under greater hardships than other criminals. And therefore, as the essence of it, as of all other crimes, consists in the *animus*, the malicious intention: if it can be made appear, that the act was perpetrated without such malicious intention, the criminality vanishes. The consideration of this will lead me to examine the second
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proposition laid down by lord Mansfield, viz. " that the proof of justification or excuse lies on the defendant; and on failure thereof, the law implies a criminal intent."

Here the only question is, whether this intent be a matter of fact, or a matter of law; and upon whom, the proof of it lies? To determine this question, it is necessary to state, that there is in law as in reason, in every act a presumed or implied intention, and a real one. They may be the same in many cases, but they may also differ. Intention taken *per se* is a purpose of the mind, and while it remains in the operation of the mind, without any demonstration by overt-act, or clear expression, it is neither the object of evidence as a fact, nor of legal discussion as a matter of law. Every intention does not produce an act, but every act of a rational creature presumes and implies an intention. Now all acts are either criminal, or not criminal; and as the act is the ground from which only the intention can be gathered; it follows, that from a criminal act, a criminal intention must be implied in the nature of the thing. Because, if an innocent intention could be presumed from a criminal act, a criminal intention might, by parity of
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of reason be presumed from an innocent act. Therefore it is, that in all countries, and ever since men knew the difference between law and brutal force, the nature of the intention is gathered from the nature of the act by which the intention is indicated; and in criminal law, a criminal act implies a criminal intent.

If there be a man in the world absurd enough to deny this, with him I will not reason. This implied intent forms what in law is called *presumptio juris*, and it establishes that degree of moral certainty upon which the law will operate in default of more conclusive evidence. If this were not so, every crime would go unpunished, whenever a direct proof of the intention with which it was committed, could not be had, and as it is impossible in most cases to bring proof of a criminal intention, it would amount to an impunity for all crimes.

But as every presumption, raised by the law, must give way to the direct truth of the fact, so this presumption of a criminal intent, from a criminal act done, is defeated by a direct proof of an innocent intention. And this being established, it clearly appears, that the presumed intention raised by the law, is a matter of *law*, and the real intention

tention by which the former is defeated, is a matter of *fact*. Then the question will be *cui incumbit onus probandi*? Who must prove this fact? The prosecutor, by bringing evidence of the criminal act, has clearly established all that is incumbent upon him; he never can be bound to prove circumstances to disculpate the defendant, for that would be to defeat his own charge: and therefore, the question answers itself, that the *onus probandi* lies on the defendant. It therefore recurs to this, what sort of proof must he give, to defeat the legal inference of a criminal intention? Will it be sufficient that he negatives the presumption of law? By no means. The only method of defeating it, is by proving a contrary intention, which could not exist together with the criminal one which the law implies, viz. by proving such positive circumstances as will persuade the jury either to return a general verdict of acquittal; or, if they are more cautious, a special verdict, upon which the court can pronounce a judgment of acquittal.

Nothing of this kind was offered in Woodfall's case; no circumstances of justification, alleviation, or excuse were either alledged, or attempted to be proved. The
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defence was merely *argumentative*; and proceeded entirely upon a *petitio principii*, or begging of the question, viz. that the paper charged in the information was not a libel; which was precisely the question depending on the judgment of the court. Had Mr. Woodfall's counsel moved this in arrest of judgment, they would have had the opinion of the court, whether the paper was a libel or no; had they brought any evidence in justification, alleviation, or excuse, the question of law would not have remained open upon the face of the record; and the jurisdiction of the court would have been excluded, unless the jury had returned a special verdict. But the prosecutor having established his charge by a direct proof of printing and publishing, the legal inference of a criminal intention could not be defeated by argument before a jury, who were only judges of the fact.

Yet all this is only arguing upon the principles of law, without any consideration of exceptions from the general rule, of which there is one, which might render it very material for the counsel to expatiate upon the innocence of the paper. The lenity, and extreme tenderness of our law,

law, for such as are brought to answer in a criminal court of justice, has established a distinction full of humanity; and though sometimes attended with inconveniency, by suffering the guilty to escape, is yet dear to every man who wishes well to the constitution. I have endeavoured to prove, that a defendant is not concluded by a general verdict *guilty*; but may move in arrest of judgment, if the question of law remains open on the face of the record; and those who deny this, deprive their fellow subjects of a great resource in extremity. Lord Camden denies it, and yet he pretends to be a patriot, just as he was when he attempted to revive the dispensing power of the crown. Lord Mansfield affirms it, and yet he is no more a patriot, than when he defeated that pernicious and unconstitutional attempt. These are contradictions, which I cannot reconcile; but I can tell the world, that though a verdict *guilty* is not conclusive against the defendant, yet a verdict *not guilty* is conclusive for him in all cases; at least I know no method by which a person, found not guilty by a regular and fair verdict, can be brought in question again for the same fact. Therefore it may be proper for an advocate to persuade the jury, by argument,

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that his client is innocent ; and if he can induce them to return a general verdict *not guilty*, he gains his point.

But what may be very proper for an advocate, would be very improper in a judge. His business is to direct the jury, in what is law, according to the circumstances of the case, by referring the whole issue, if it is complicated of law and of fact; or by telling them to find the fact, if the question remains open on the record. If they are willful, and will acquit the defendant against evidence, and against law, there is no help for it; if they are determined to find him guilty in general, there is no help for it either; he has his remedy by arrest of judgment, if the question remains open.

Thus I have explained lord Mansfield's charge to the jury, in Woodfall's case; and I flatter myself it will not appear, in the eyes of discerning men, so dreadful to the constitutional power of juries, as the patriots affect to represent it. It only remains that I should bestow a few words in defence of one or two positions, uttered by his lordship, in delivering the opinion of the court, when the import of the verdict came to be considered. As to the judgment itself, (for it certainly was a judgment, and a definitive

fnitive judgment upon the verdict, if not upon the case) the objections to it are too trifling to be taken notice of. It was certainly within the jurisdiction of the court to grant a new trial, upon one of the motions ; and upon a verdict so worded, that the *beginning* of it expressed a legal conviction, and the *end* something, which many of the jury themselves would be hard put to it to define : therefore, the fair and equitable, and, give me leave to say, the favourable determination for the defendant, was to grant a new trial.

It is well known that the words of the verdict were, *guilty of printing and publishing only*. The word *guilty* is the only legal term expressive of conviction. *Guilty of printing and publishing*, is guilty of what was charged in the information ; so that the only ground of doubt was in the word *only*. Some men might have argued, that a posterior, indefinite, and untechnical expression, could not defeat the effect of an antecedent unambiguous, technical term ; and therefore, whatever the jury might have meant by the word *only*, the conviction was full and complete by the word *guilty*. Others, instead of setting them in opposition, would have connected them together ; and so construed the verdict, as if the ju-

ry had said *guilty only*, or *only guilty*. This, I confess, would have been a strained construction; neither did the court adopt the one nor the other, nor many which ingenuity might surmise. In arguing hypothetically on what might be the real meaning of the jury by the word *only*, lord Mansfield figured many cases: He said, (truly) it could not mean to exclude other charges, because printing and publishing were the only charges in the information. Secondly, he said, that it could not mean an acquittal, because the fact found by the jury, was the very *crime* they were to try.

To this I have heard some exceptions are taken, but I confess I never could understand them well enough to reduce them to a distinct idea in my own mind: it may be dullness, or misapprehension in me, but if it is so, I cannot help it. Perhaps the objection means to say, that guilty of printing and publishing, is not guilty of the crime charged in the information; either because there are no words of reference, or that printing and publishing a libel is not a crime. If that be the meaning of the objection, I understand it; but I do not think it a good one; because, as to the words of reference, that is a matter of mere form, and the office of the clerk to fill up.

up. With respect to the other sense, I can hardly believe any man will seriously maintain, that printing and publishing a libel is not a crime. But perhaps the objectors will say, that the very force of the objection lies in the word *crime*, made use of by lord Mansfield: for they argue thus; We do not admit that the Letter, signed Junius, was a libel, and therefore guilty of printing and publishing it was no crime. In answer to this, it may be sufficient to say, that this is a cavil of words. If lord Mansfield had made use of the word *fact*, instead of the word *crime*, the objection vanishes; and, surely if there is any truth in the propositions I have endeavoured to establish, printing and publishing was the very *fact* the jury were to try.

But what if lord Mansfield should be convinced in his own mind, that the Letter, signed Junius, was a gross and outrageous libel; and that the printing and publishing it was a crime? I own, if he thinks so, he is guilty of a dreadful heresy against the opinion of so many respectable patriots. But God pardon me, for I am in the same damnable error myself, and I am afraid I shall die in it: yet, leaving this to time and the force of repentance, might not he, or I, or any man, call that a crime, which, following

ing our own heterodox opinions, we really thought so? I put this cautiously, and with great deference, for I am in doubt how far it is even lawful to think differently from our venerable and worthy patriots.

But if the printing and publishing of the Letter, signed Junius, was not a crime, why did not the defendant's counsel move in arrest of judgment upon the ground? The information charged printing and publishing a libel; the jury found the defendant guilty of printing and publishing; there was nothing before the court to make them doubt, that a libel had been published, and therefore calling the printing and publishing *the very crime the jury were to try*, was an expression of technical propriety.

Lord Mansfield's third position, on the conjectural meaning of the word *only*, was this, " If the jury meant to say, that they
 " did not find the paper a libel, or did not
 " find the epithets, or did not find any ex-
 " press malicious intent, it would not af-
 " fect the verdict, because none of these
 " things were to be proved or found either
 " way. And he added, that if they had
 " expressed their meaning to this purpose,
 " the verdict would not have been affected
 " by it." To

To this part of the opinion, I understand, the great objection lies; and it is, that hereby juries are restrained from entering into the whole matter, and returning a general verdict in all cases: but a more false conclusion perhaps was never drawn from true premises. The power of juries to return a general verdict is no more in question here, than the question of transubstantiation, or any other of the most unapposite. In his fourth position, lord Mansfield refers to that power; and because the argument will be better understood, by setting in opposition to each other, *that* wherein he speaks of the general power of juries, and *that* wherein he does not, I shall set down his words here, “ If they
 “ only meant to say that they did not find
 “ the meaning, put upon the paper by
 “ the information, they should have acquitted the defendant: if they had expressed this to be their meaning, the
 “ verdict would have been inconsistent and
 “ repugnant, for they ought to not find
 “ the defendant guilty, unless they find
 “ the meaning put upon the paper by the
 “ information, and judgment of acquittal
 “ ought to have been entered up.”

I desire any man to say, whether there can be figured words more strongly expressive of

the power of juries, to return a general verdict, than these words contain. When, in the course of his hypothetical reasoning, lord Mansfield came to touch on the power of juries, he admits it in its full extent, by saying *they thought to have acquitted the defendant*, had they thought so or so. But it must be observed, that in all the cases supposed by lord Mansfield, he takes along with him the particular circumstances of the case in question; he does not argue upon the power of juries in the abstract, not upon what they *may* do, in the plenitude of their power; but upon what they ought to do in a case, where the question of law is open on the face of the record, where no evidence is offered for the defendant; and the issue of course, is in substance an issue of fact, uncomplicated with law. He thought it unnecessary to say, that as no jury can be punished for returning a verdict, of whatever kind, so it be regular and fairly obtained, therefore juries may in every case return what verdicts they please. But he supposed that *this* jury did not mean to make a wanton, or arbitrary use of their power, but were disposed to exercise it within the bounds which the circumstances of the case, and the general principles of the law prescribed to them; and he argues upon this supposition. In

In fair argument, it is always improper to apply a conclusion to one thing, when the premises relate to another; and if those who object to lord Mansfield's doctrine mean fairly, they will not fall into this impropriety. If they do not mean fairly, the question is at a end; but so also is their boasted regard for the law and the constitution. I, however, keeping this rule in view, and only applying conclusions to their proper premises, understand my lord Mansfield's doctrine as relating to the circumstances of Woodfall's case; and not as a general system, in which the *inclusion* of particular powers might be construed as an *exclusion* of all others.

Therefore, if by the word *only*, the jury could be supposed to mean; that they did not find the paper a libel, it would not affect the verdict, because they had already found the *material issue*, viz. guilty of printing and publishing. And it would have been the same thing, if instead of the word *only*, they had added in express terms, *But we do not find the paper charged to be a libel.* The reason is, that having established the material issue, which was the precise point of their jurisdiction, they could not afterwards defeat it, by finding a contradictory position, upon a question
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which

which was not within the compass of their jurisdiction. If it be true, as I have endeavoured to prove, that libel or no libel, is a question of law, and competent to the court only, because open on the face of the record, this after-branch of the verdict would be a finding in *law*, to defeat the effect of a *fact* already found.

I consider all verdicts in which the jury go beyond the precise terms, of *guilty* or *not guilty*, as special verdicts in some sense, because they find particular facts. Now in all cases of verdicts at large (as they are called by our old authors) or special verdicts, whether the jury find the law or not, is of no import. Because, though the court will give its legal effect to a special verdict, in which the law is found, if it be right found; yet if it be wrong, the verdict has no effect at all; and the party is no further advanced by the finding in law, than if it had been left open to the court.

From thence it follows, that as a jury in all cases can return a general verdict, *guilty* or *not guilty* but in one case, (that is, where the verdict is *guilty*, and the question of law remains open on the face of the record,) the court can interpose upon motion in arrest of judgment, to defeat the effect of the verdict; so whenever a jury
goes

goes further, and finds particular facts, they let in the jurisdiction of the court, to determine the legal effect of the facts found; and therefore, having found particular facts, no after-opinion of theirs, as to the legal consequences of these facts, however expressed, can be conclusive.

There is another objection made to lord Mansfield's doctrine; which is so like that of a school-boy, that I am almost ashamed to take notice of it. The objection is, that if a verdict, guilty of printing and publishing, be guilty of a libel; the trades of a printer and a publisher, which used to be lawful trades, are become of a sudden criminal. One would hardly think that this objection could be made by a barrister; and yet it is stated in the words of a man, who calls himself by that appellation. People of no letters, and even men of letters, whose reading has not been turned that way, may be ignorant that a verdict is not a primary proposition of itself, but a conclusion drawn from another proposition. It bears a direct relation to the crime charged; and applies the evidence given of a fact, to the record, (be it indictment or information,) in which that fact is stated as *criminal*, and laid against the particular *person*, who is accused of having committed it. This is

so well understood, that all general verdicts are returned by the jury in a single word, *guilty*; or in two at most, *not guilty*. Or it is an answer to the question of the clerk, in which the crime, and the person are particularly specified. Indeed when it comes to be recorded, the reference to persons and things is particularly filled up; but this is done in the course of the clerk's ministerial duty; and by no means either what the jury are bound to do, or what they practice.

If a general verdict in one word *guilty*, would refer to the crime laid in the indictment, a verdict *guilty of printing and publishing* will bear the same relation to it. Because, printing and publishing constitute the whole of the charge; and I would ask, what is the meaning of *guilty* in the abstract, or of *guilty of printing and publishing*? If it does not refer to an antecedent proposition, it can neither apply to persons nor things. It is guilty of every thing, and guilty of nothing. It includes every body in the guilt, and nobody. It a word, in has no sense or meaning, unless understood to relate to the crime charged.

If I were disposed to push the absurdity of this objection as far as it would go, I should say, that by adding the words, *printing and publishing* to the word *guilty*,

the jury instead of rendering their verdict more irrelative than if it had been *guilty* generally, have done the reverse. They have, by the addition, concentrated as it were, and brought home the charge by a particular finding of the fact upon which it was grounded. But the whole objection is, a wanton misapplication of words without meaning, or, what is worse, a bad meaning.

Thus I have endeavoured to explain, my lord Mansfield's doctrine in Woodfall's case; I have argued upon principle, and not authority. But very man who knows the law, knows where to find authorities for every proposition I have advanced. To have entered into a detail of them, would have been a servile imitation of a servile imitator, I mean the author of the Letter on Libels, who has since written in the news-papers, under the character of Philo-lutherus, Anglicanus, and E. M. He, partly imitating Paschal, and partly the dull verbosity of a German commentator, flounders and blunders through a chaos of cases, without principle to direct, judgment to set him right, or a clew to guide him in his course. His sarcastic jokes may please, his illiberal satire may feed those who are fond of such food; but his law will never be followed, because it is incohe-

coherent, inconsistent, and unintelligible. As for myself, I mean no more than to express my own sentiments upon the rise, progress, and effects of those political disputes, which have produced a warm sensation upon the *executive, legislative, and judicative* powers of the constitution. Opposition to administration is the health and vigour of a free state; and God forbid we should ever see an opposition wanting in this kingdom. But to make it subservient to constitutional purposes, it must be confined to the executive powers. If it attacks the legislative, or judicative, it becomes unconstitutional and pernicious. Those men who endeavoured to inflame the spirits of the people against their *representatives* and their *judges*, can never be friends to the liberties of the people. I am warranted to say this upon theoretical principles, but I am better warranted by the fact. Let any man look round the nation, and see whether he can find a single patriot who has any other view than to advance himself in riches and power. The loaves and fishes are the objects they aim at; and to come at them they would trample on the constitution of England. How often have not the people been deceived in those whom they considered the friends to their liberties? Yet the same

same arts, the fallacy of which they have experienced, lead them on in the same flowery path. If they would open their eyes to what is around them, they would see their situation happier than any nation upon earth. They would see their commerce extending daily, their riches encreasing, and their country the center of arts and endowments. They would see on the throne a king, whose only wish is to promote his subjects' happiness, and whose only mistake, in the means to procure it, has been a too studious attention to satisfy the wayward desires of every party. They would see a parliament, composed of men, whose interest never can be opposite to that of the people; and who, in fact, have done more for the interest of liberty, than any parliament since the æra of the Revolution. They would see a bench of judges, in whom wisdom, knowledge, and integrity, are equally conspicuous; men who on all occasions have supported the real liberties of the people, and redressed, by legal and constitutional means, every injury offered to their rights. As for lord Mansfield, I know him not, but in his public character; and I defend him, because I think his conduct is upright, consistent, and constitutional. I could wish, however, that the austerity of his virtue could bend a
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little to the depraved temper of the times; he would not be a better man, but his great and shining qualities might be of more use to his country: yet, take him for all in all, it will *be a wonder, indeed*, if we see his like again.

I proposed to say something upon Almon's case, but the objection to the opinion there given is so trifling, that I should be inexcusable to tire my reader with a longer deduction: I shall only say, that if any injury had been done the defendant in that case, by the direction of lord Mansfield to the jury, it is not to be imagined that the *learned and patriotic serjeant*, who acted as counsel for him, would not have moved in arrest of judgment, the question of law being, as in Woodfall's case, open on the face of the record. *And so Mr. Morris I wish you good night, &c.*

F I N I S.

OR

Ex. A. S. K.

7/15/13